

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

77-1171

POS

**United States Court of Appeals
For the Second Circuit**

UNITED STATES OF AMERICA,

Appellee,

-against-

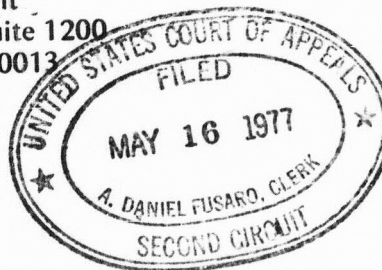
WILLIE J. GRIFFIN,

Appellant.

Appeal from a Judgment of Conviction
Rendered in the United States District
Court for the Southern District of New York

APPELLANT'S APPENDIX

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A U 1-

PC ()	JUDGE/MAGISTRATE Assigned	U.S.	GRiffin, WILLIE J.	Case Filed Mo. Day	76 0938 02
MO ()	0855	vs.	a/k/a "Bill"	10 05	
File #	0208 1		A-1	No. of Def's	* 09
Fel *	District Office	(LAST, FIRST, MIDDLE)		JUVENILE	

U.S. MAG. CASE NO.

U.S. TITLE/SECTION

21:846
21:812, 841 &
18:2

OFFENSES CHARGED

Conspiracy to viol. Fed. Narco Laws
Distr. & possess. of Heroin, I.

ORIGINAL COUNTS

1
9

21:846
21:812 & 841

Consp. y to viol. Federal Narco. Laws
Distr. & possession of Heroin, I.

1
9

SUPERSEDING COUNTS

BAIL - RELEASE

☐ AMT ☐ Fugitive
☐ Denied ☐ Set ☐ Pers Recog
☐ PSA

S 000 conditions

☐ Date ☐ 10% Deposit
☐ Surety Bond
☐ Collateral
☐ 3rd Ptry Cust Other
☐ Bail Not Made
☐ Status Changed (See Docket)

II. KEY DATES & INTERVALS

ARREST or	INDICTMENT	ARRAIGNMENT	TRIAL	SENTENCE
U.S. Custody Began 10-7-76	High Risk Date 10-5-76	1st Plea 10-7-76	Trial Set For 12-9-76	Disposition of Charges 1-26-77
Summons Served	Indict. Waived	Final Plea	Voir Dire 1-4-77	☒ Convicted ☒ On All Charges
First Appearance	Superseding Indict/Info 10-26-76		Trial Began 1-4-77	☐ Acquitted ☐ On Lesser Offense(s)
	In Charging District		Trial Ended 1-26-77	☐ Dismissed ☐ WOP ☐ WWP
				☐ On Government's Motion

MAGISTRATE

DATE	INITIAL/NO.	INITIAL APPEARANCE DATE	INITIAL/NO.	OUTCOME
Search Warrant Issued		PRELIMINARY EXAMINATION OR REMOVAL HEARING		☐ DISMISSED
Summons Issued		☐ WAIVED ☐ NOT WAIVED		☐ HELD FOR GO OR OTHER PROCEEDING IN THIS DISTRICT
Arrest Warrant Issued		☐ INTERVENING INDICTMENT		☐ HELD FOR GO OR OTHER PROCEEDING IN DISTRICT BELOW
COMPLAINT				
OFFENSE (In Complaint)				

U.S. Attorney or Asst

ATTORNEYS

Defense: ☐ CJA ☐ Ret ☐ Waived ☐ Self ☐ None / Other: ☐ PD ☐ CD

Ronald L. Garnett
791-0070

226

Show last names and suffix numbers of other defendants on same indictment information:
Griffin, C.-01, Doe-03, Hatton-03, Ivery-05, Boykin-06, Burnside-07,
Bryant-08, Forte-09

PROCEEDINGS

EXCLUDABLE DELAY

(a) (b) (c)

10-5-76	Filed indictment. Ordered sealed. B/W Ordered... Duffy, J.
10-7-76	Indictment ordered unsealed. Court directs entry of not guilty plea. Case assigned to Knapp, J. for all purposes.. Palmieri, J.
10-8-76	Filed documents forwarded by Magistrate Jacobs. (deft. presented under R. 9(c)(1) for fixing bail. deft. remanded into the custody of U.S. Marshal in lieu of \$300,000. cash or surety.)
10-19-76	Deft. (atty. present) Bail set at \$10,000. cash or surety to be posted by Fri. 10-22-76 at 4PM. Knapp, J.
10-26-76	Filed Superseding Indictment & referred to Knapp, J... Gagliardi, J.
10-22-76	Filed Surety bond in the sum of \$10,000.
10-20-76	Filed Govt's notice of readiness for trial.
11-08-76	Filed waiver of removal hearing forwarded from Dist. of S. Carolina dated 10-15-76.
11-18-76	Deft. (atty. O.J. Wells) hearing held on conflict of interest issue. Knapp, J.
11-23-76	

F

DATE	IV. PROCEEDINGS (continued)	PAGE TWO	V. E
	(DOCUMENT NO.)	A-2	
2-13-76	Filed transcript of record of proceedings, dated 11-23-76.		
01-04-77	Trial begun before Judge Knapp with a jury.		
01-05-77	Trial cont'd.		
01-06-77	Trial cont'd.		
01-10-77	Trial cont'd.		
01-11-77	Trial cont'd.		
01-12-77	Trial cont'd.		
01-13-77	Trial cont'd.		
01-14-77	Trial cont'd.		
01-17-77	Trial cont'd.		
01-18-77	Trial cont'd.		
01-19-77	Trial cont'd.		
01-20-77	Trial cont'd.		
01-24-77	Trial cont'd.		
01-25-77	Trial cont'd.		
01-26-77	Trial cont'd. & concluded. Deft. found guilty on cts. 1,9. P.S.I. ordered bail revoked, deft. remanded; sent. adj. to 3-9-77. Knapp, J.		
11-10-76	Govt's oral application to nolle prosequi indictment in this case filed 10-5-76 and superseded by the instant indictment is granted. Knapp, J.		
03-09-77	Filed Judgment (atty. O.T. Wells, Esq.) 7½ yrs. on cts. 1 and 9 to run conc. w/each other; and pursuant to T. 21, U.S.C. 841 deft. is placed on Special Parole for period of 3 yrs. Knapp, J. issued all copies.		
03-21-77	Filed deft's notice of appeal from judgment of conviction. copies distributed by Judge Knapp's Courtroom Deputy.		
03-23-77	Filed J.C. with Marshal's return. Deft. delivered to Warden, MCC on 3-9-77.		
04-04-77	Filed Notice that 1st Suppl. record on appeal has been certified and transmitted to USCA, 2nd Circuit.		
3-31-77	Filed transcript of record of proceedings dated 3/9/77		
4-4-77	Filed transcript of record of proceedings dated 4/4, 5, 6, 10, 11, 1977		
	" 11/12/13, 14, 17, 18, 1977		
	" 11/19, 20, 21, 24, 1977		
	" 1/25, 26, 1977		
04-12-77	Filed notice that eh 3rd suppl. record on appeal has been certified and transmitted. to the U.S.C.A.		
04-11-77	Filed transcript of record of proceedings, dated 2-22-77		
4/12/77	Filed transcript of record of proceedings, dated 1/4/77		

A 003_

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

A-3

U. S. vs

Griffin, Willie J.

DATE	PROCEEDINGS (continued)
(Document No.)	
04-07-77	Filed notice that the 2nd record on appeal has been certified and transmitted to the U.S.C.A.
04-14-77	Filed J&C and marshal's return, deft. delivered to: MCC. N.Y.C. 3-9-77.

RLG:jm
n-2720UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

76 CRIM. 0938

UNITED STATES OF AMERICA, :

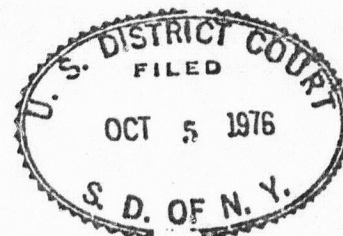
-v- :

INDICTMENT

76 Cr.

CODELL GRIFFIN, a/k/a "Cody" :
 WILLIE J. GRIFFIN, a/k/a "Bill" :
 JOHN DOE, a/k/a "Roy", :
 a/k/a "Leroy Sullivan" :
 JEROME HATTON, a/k/a "Jew" :
 JOHN DOE, a/k/a "Kenny", a/k/a :
 "Ken Ivory" :
 JOHN DOE, a/k/a "Monk" :
 ROBERT BURNSIDE, a/k/a "Rico" :
 JOHN D. BRYANT, a/k/a "Gypsy" and :
 DONNA FORTE, :

Defendants. :

COUNT ONE

The Grand Jury charges:

1. From on or about the 1st day of September, 1971, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, and elsewhere,

CODELL GRIFFIN, a/k/a "Cody"
 WILLIE J. GRIFFIN, a/k/a "Bill"
 JOHN DOE, a/k/a "Roy"
 a/k/a "Leroy Sullivan"
 JEROME HATTON, a/k/a "Jew"
 JOHN DOE, a/k/a "Kenny", a/k/a "Ken Ivory"
 JOHN DOE, a/k/a "Monk"
 ROBERT BURNSIDE, a/k/a "Rico"
 JOHN D. BRYANT, a/k/a "Gypsy" and
 DONNA FORTE,

the defendants, and others to the Grand Jury known and unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each

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other to violate the narcotics laws of the United States, specifically, Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

THE OBJECT OF THE CONSPIRACY

2. It was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute heroin, a Schedule I narcotic drug controlled substance, in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

THE MEANS USED BY THE DEFENDANTS
AND CO-CONSPIRATORS TO ACCOMPLISH
THE OBJECT OF THE CONSPIRACY

3. Among the means whereby the defendants and co-conspirators would and did carry out the objects of said conspiracy, and did insure the success of the unlawful venture to sell and distribute heroin for profit, were the following:

(a) The conspiracy took the form of a pyramid business organization with its members functioning at three basic levels. At the top of the pyramid, and at the first level, was the source of supply of the narcotic drugs. At the second level, other members of the conspiracy acted as employees of the source and distributed the narcotic drugs to other defendants and co-conspirators at the third level who, in turn, distributed these drugs to their respective customers. Certain of the other defendants and co-conspirators

performed specialized functions which were essential to the success of the overall conspiracy. In this fashion, a chain of distribution was established for this narcotics-trafficking business leading from the source of heroin through employees, retailers and ultimately to heroin addicts and users in New York City.

(b) During the course of the said conspiracy, the said defendants played the following roles in this conspiracy:

SOURCE

(1) Defendant CODELL GRIFFIN, a/k/a "Cody" was the source of supply of heroin, and employed several persons as sellers and couriers in the delivery of heroin to other defendants and co-conspirators in New York City between 1971 and 1976.

(2) Defendant WILLIE J. GRIFFIN, a/k/a "Bill", the brother of the defendant Codell Griffin, a/k/a "Cody", negotiated the sale of heroin on consignment and collected proceeds from such heroin sales on behalf of the Source in New York City.

EMPLOYEES

(3) Defendants JOHN DOE, a/k/a "Roy", a/k/a "Leroy Sullivan", JEROME HATTON, a/k/a "Jew" JOHN DOE, a/k/a "Kenny", a/k/a "Ken Ivory", and John Doe, a/k/a "Monk", were employees of the defendants CODELL GRIFFIN, a/k/a "Cody", and WILLIE J. GRIFFIN, a/k/a "Bill", and at various times negotiated with, sold to, and received money from co-defendants and co-conspirators who had purchased bulk-quantities of heroin from the above Source.

A 007-

DISTRIBUTORS

(4) Defendants ROBERT BURNSIDE, a/k/a "Rico", JOHN D. BRYANT, a/k/a "Gypsy", DONNA FORTE and other co-conspirators purchased and resold bulk-quantities of heroin received from the Source or his employees.

(5) Other co-conspirators, not named herein as defendants, served respectively during the course of the said conspiracy as resellers of narcotic drugs in New York City.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects hereof, the following overt acts were committed in the Southern District of New York and elsewhere:

1. In or about September, 1971, the defendant CODELL GRIFFIN, a/k/a "Cody", sold 25 quarter-spoons of heroin in New York, New York.

2. In or about 1972, the defendant CODELL GRIFFIN, a/k/a "Cody", sold large amounts of heroin in quarter-spoon quantities in New York, New York.

3. From in or about January, 1973, up to on or about September 27, 1973, the defendant CODELL GRIFFIN, a/k/a "Cody", sold large amounts of heroin in quarter-spoon quantities in at New York, New York.

4. In or about April, 1974, the defendant CODELL GRIFFIN, a/k/a "Cody", purchased 1/2 kilogram of heroin for \$16,500 in New York, New York.

5. In or about May, 1974, the defendant CODELL

A 008-

GRIFFIN, a/k/a "Cody", purchased 1/2 kilogram of heroin for \$16,500 in Bronx, New York.

6. In or about June, 1974, the defendant CODELL GRIFFIN, a/k/a "Cody", purchased 1/2 kilogram of heroin for \$16,500 in New York, New York.

7. In or about April, 1975, the defendant CODELL GRIFFIN, a/k/a "Cody", sold 200 quarter-spoons of heroin in New York, New York.

8. In or about May, 1975, the defendant DONNA FORTE delivered 100 quarter-spoons of heroin to another person in New York, New York.

9. From in or about June, 1975, up to on or about December 31, 1975, the defendants JOHN D. BRYANT, a/k/a "Gypsy", and ROBERT BURNSIDE, a/k/a "Rico", sold large amounts of heroin in quarter-spoons quantities in New York, New York.

10. From in or about June, 1975, up to on or about December 31, 1975, the defendant JOHN DOE, a/k/a "Roy", a/k/a "Leroy Sullivan", delivered large amounts of heroin in quarter-spoon quantities to defendants JOHN D. BRYANT, a/k/a "Gypsy", and ROBERT BURNSIDE, a/k/a "Rico", in New York, New York.

11. From in or about June, 1975, up to on or about December 31, 1975, the defendants CODELL GRIFFIN, a/k/a "Cody", and WILLIE J. GRIFFIN, a/k/a "Bill", received

A 009-

large amounts of money daily from JOHN D. BRYANT, a/k/a "Gypsy", and ROBERT BURNSIDE, a/k/a "Rico", in New York, New York.

12. In or about September, 1975, the defendant DONNA FORTE had a telephone conversation with an individual in Greenville, South Carolina.

13. In or about September, 1975, the defendant DONNA FORTE received 50 quarter-spoons of heroin from defendant CODELL GRIFFIN, a/k/a "Cody", in New York, New York.

14. On September 12, 1975, the defendant CODELL GRIFFIN, a/k/a "Cody", negotiated the sale of two ounces of heroin to another person in New York, New York.

15. On December 16, 1975, the defendant CODELL GRIFFIN, a/k/a "Cody", sold 1/8 kilogram of heroin for \$4,500 in New York, New York.

16. On or about February 13, 1976, defendants CODELL GRIFFIN, a/k/a "Cody", WILLIE J. GRIFFIN, a/k/a "Bill", and John Doe, a/k/a "Roy", a/k/a "Leroy Sullivan", sold 100 quarter-spoons of heroin for \$4,500 in New York, New York.

17. From in or about February, 1976, up to and including July 22, 1976, the defendants CODELL GRIFFIN, a/k/a "Cody", WILLIE J. GRIFFIN, a/k/a "Bill", JEROME HATTON, a/k/a "Jew", and JOHN DOE, a/k/a "Roy", a/k/a "Leroy Sullivan", sold large amounts of heroin in quarter-spoon quantities in New York, New York.

A 010-

18. On or about March 24, 1976, the defendant CODELL GRIFFIN, a/k/a "Cody", discussed the sale of 1/8 kilogram of heroin for \$6,100 in New York, New York.

19. On or about March 27, 1976, the defendant CODELL GRIFFIN, a/k/a "Cody", discussed the sale of 1/8 kilogram of heroin for \$6,100 in New York, New York.

20. On or about March 30, 1976, the defendant CODELL GRIFFIN, a/k/a "Cody", discussed the sale of 1/8 kilogram of heroin for \$6,100 in New York, New York.

21. On or about April 9, 1976, the defendant CODELL GRIFFIN, a/k/a "Cody", discussed the sale of 1/8 kilogram of heroin for \$6,100 in New York, New York.

22. On or about June 28, 1976, the defendants CODELL GRIFFIN, a/k/a "Cody", and JEROME HATTON, a/k/a "Jew", sold 100 quarter-spoons of heroin in New York, New York.

23. On or about June 29, 1976, the defendants, CODELL GRIFFIN, a/k/a "Cody", and JOHN DOE, a/k/a "Monk", sold 29 quarter-spoons of heroin for \$1,200 in New York, New York.

24. On or about July 14, 1976, the defendants CODELL GRIFFIN, a/k/a "Cody", and JOHN DOE, a/k/a "Kenny", a/k/a "Ken Ivory", sold 40 quarter-spoons of heroin for \$1,600 in New York, New York.

A C11-

25. On or about July 14, 1976, the defendant JOHN DOE, a/k/a "Kenny", a/k/a "Ken Ivory", sold 79 quarter-spoons of heroin for \$3,100 in New York, New York.

(Title 21, United States Code, Section 846.)

COUNT TWO

The Grand Jury further charges:

From on or about the 1st day of September, 1971, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, CODELL GRIFFIN, a/k/a "Cody", the defendant, unlawfully, wilfully, intentionally and knowingly did engage in a continuing criminal enterprise in that he unlawfully, wilfully, and intentionally and knowingly did violate Title 21, United States Code, Sections 812, 841(a)(1), 841(b)(1) (A) and 846 as alleged in Counts One, Three through Six and Eight through Twelve of this indictment, which are incorporated by reference herein, and did commit other violations of said statutes, which violations were part of a continuing series of violations of said statutes undertaken by the defendant in concert with five or more other persons, with respect to whom the defendant CODELL GRIFFIN, a/k/a "Cody", occupied a position of organizer, supervisor and manager, and from which continuing series of violations the defendant CODELL GRIFFIN, a/k/a "Cody", obtained substantial income and resources.

(Title 21, United States Code, Section 848.)

A 012--

COUNT THREE

In or about April, 1974, in the Southern District of New York, CODELL GRIFFIN, a/k/a "Cody", the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately 1/2 kilogram of heroin.

(Title 21, United States Codes, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT FOUR

The Grand Jury further charges:

In or about May, 1974, in the Southern District of New York, CODELL GRIFFIN, a/k/a "Cody", the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately 1/2 kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A), Title 18, United States Code, Section 2.)

A 013-

COUNT FIVE

The Grand Jury further charges:

In or about June, 1974, in the Southern District of New York, CODELL GRIFFIN, a/k/a "Cody" the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately 1/2 kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT SIX

The Grand Jury further charges:

In or about April, 1975, in the Southern District of New York, CODELL GRIFFIN, a/k/a "Cody", the defendant, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule I controlled substance, to wit, approximately 200 quarter-spoons of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(B); Title 18, United States Code, Section 2.)

A 014^m
COUNT SEVEN

In or about September, 1975, in the Southern District of New York, DONNA FORTE, the defendant, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule I controlled substance, to wit, approximately 50 quarter-spoons of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(B); Title 18, United States Code, Section 2.)

COUNT EIGHT

The Grand Jury further charges:

On or about the 16th day of December, 1975, in the Southern District of New York, CODELL GRIFFIN, a/k/a "Cody", the defendant, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule I controlled substance, to wit, approximately 1/8 kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(B); Title 18, United States Code, Section 2.)

A 0154

COUNT NINE

The Grand Jury further charges:

On or about the 13th day of February, 1976, in the Southern District of New York, CODELL GRIFFIN, a/k/a "Cody", WILLIE J. GRIFFIN, a/k/a "Bill", and JOHN DOE, a/k/a "Roy", a/k/a "Leroy Sullivan", the defendants, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule I controlled substance, to wit, approximately 100 quarter-spoons of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(B); Title 18, United States Code, Section 2.)

COUNT TEN

The Grand Jury further charges:

On or about the 28th day of June, 1976, in the Southern District of New York, CODELL GRIFFIN, a/k/a "Cody", and JEROME HATTON, a/k/a, "Jew", the defendants, unlawfully wilfully and knowingly did distribute and possess with intent to distribute a Schedule I controlled substance, to wit, approximately 100 quarter-spoons of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(B); Title 18, States Code, Section 2.)

A 016

COUNT ELEVEN

On or about the 29th day of June, 1976
in the Southern District of New York, CODELL GRIFFIN,
a/k/a "Cody", and John Doe, a/k/a "Monk", the defendants,
unlawfully, wilfully and knowingly did distribute and
possess with intent to distribute a Schedule I controlled
substance, to wit, approximately 29 quarter-spoons of heroin.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(B); Title 18,
United States Code, Section 2.)

COUNT TWELVE

The Grand Jury further charges:

On or about the 14th day of July, 1976 in t.
Southern District of New York, CODELL GRIFFIN, a/k/a "Cody",
and JOHN DOE, a/k/a "Kenny," a/k/a "Ken Ivory", the defendants,
unlawfully, wilfully and knowingly did distribute and possess
with intent to distribute a Schedule I controlled substance,
to wit, approximately 40 quarter-spoons of heroin.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(B); Title 18, United
States Code, Section 2.)

COUNT THIRTEEN

The Grand Jury further charges:

On or about the 14th day of July, 1976 in the
Southern District of New York, JOHN DOE, a/k/a "Kenny,"
a/k/a "Ken Ivory", the defendants, unlawfully, wilfully and
knowingly did distribute and possess with intent to distrib-
ute a Schedule I controlled substance, to wit, approximately

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A 017-

79 quarter-spoons of heroin.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(B); Title 18, United
States Code, Section 2.)

William R. Dawson
Foreman

Robert B. Fiske Jr.
ROBERT B. FISKE, JR.
United States Attorney

A 018-

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(S) 76 CR 938

UNITED STATES OF AMERICA

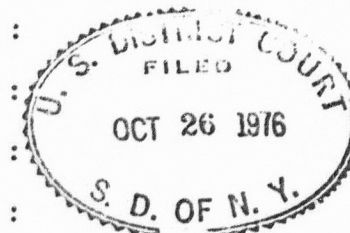
- v -

INDICTMENT

S 76 Cr.

GODELL GRIFFIN, a/k/a "Cody"
WILLIE J. GRIFFIN, a/k/a "Bill"
JOHN DOE, a/k/a "Roy",
a/k/a "Leroy Sullivan"
JEROME HATTON, a/k/a "Jew"
KENNETH IVERY, a/k/a "Kenny"
THOMAS BOYKIN, JR., a/k/a "Monk"
ROBERT CHARLES BURNSIDE, a/k/a "Rico"
JOHN D. BRYANT, a/k/a "Gypsy" and
DONNA FORTE,

Defendants.



COUNT ONE

The Grand Jury charges:

1. From or about the 1st day of September, 1971,
and continuously thereafter up to and including the date of
the filing of this indictment, in the Southern District of

JOHN DOE, a/k/a "Roy",
a/k/a "Leroy Sullivan"
JEROME HATTON, a/k/a "Jew"
KENNETH IVERY, a/k/a "Kenny"
THOMAS BOYKIN, JR., a/k/a "Monk"
ROBERT CHARLES BURNSIDE, a/k/a "Rico"
JOHN D. BRYANT, a/k/a "Gypsy" and
DONNA FORTE,

the defendants, and others to the Grand Jury known and
unknown, unlawfully, intentionally and knowingly combined,
conspired, confederated and agreed together and with each

other to violate the narcotics laws of the United States, specifically, Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

THE OBJECT OF THE CONSPIRACY

2. It was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute heroin, a Schedule I narcotic drug controlled substance, in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

THE MEANS USED BY THE DEFENDANTS
AND CO-CONSPIRATORS TO ACCOMPLISH
THE OBJECT OF THE CONSPIRACY

3. Among the means whereby the defendants and co-conspirators would and did carry out the objects of said conspiracy, and did insure the success of the unlawful venture to sell and distribute heroin for profit, were the following:

(a) The conspiracy took the form of a pyramid business organization with its members functioning at three basic levels. At the top of the pyramid, and at the first level, was the source of supply of the narcotic drugs. At the second level, other members of the conspiracy acted as employees of the source and distributed the narcotic drugs to other defendants and co-conspirators at the third level who, in turn, distributed these drugs to their respective customers. Certain of the other defendants and co-conspirators

A 020

performed specialized functions which were essential to the success of the overall conspiracy. In this fashion, a chain of distribution was established for this narcotics-trafficking business leading from the source of heroin through employees, retailers and ultimately to heroin addicts and users in New York City.

(b) During the course of the said conspiracy, the said defendants played the following roles in this conspiracy:

SOURCE

(1) Defendant CODELL GRIFFIN, a/k/a "Cody" was the source of supply of heroin, and employed several persons as sellers and couriers in the delivery of heroin to other defendants and co-conspirators in New York City between 1971 and 1976.

(2) Defendant WILLIE J. GRIFFIN, a/k/a "Bill", the brother of the defendant CODELL GRIFFIN, a/k/a "Cody", negotiated the sale of heroin on consignment and collected proceeds from such heroin sales on behalf of the Source in New York City.

EMPLOYEES

(3) Defendants JOHN DOE, a/k/a "Roy", a/k/a "Leroy Sullivan", JEROME HATTON, a/k/a "Jew," KENNETH IVERY, a/k/a "Kenny", THOMAS BOYKIN, JR., a/k/a "Monk", were employees of the defendants CODELL GRIFFIN, a/k/a "Cody", and WILLIE J. GRIFFIN, a/k/a "Bill", and at various time negotiated with, sold to, and received money from co-defendants and co-conspirators who had purchased bulk-quantities of heroin from the above Source.

A 021

DISTRIBUTORS

(4) Defendants ROBERT CHARLES BURNSIDE, a/k/a "Rico", JOHN D. BRYANT, a/k/a "Gypsy", DONNA FORTE and other co-conspirators purchased and resold bulk-quantities of heroin received from the Source or his employees.

(5) Other co-conspirators, not named herein as defendants, served respectively during the course of the said conspiracy as resellers of narcotic drugs in New York City.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects hereof, the following overt acts were committed in the Southern District of New York and elsewhere:

1. In or about September, 1971, the defendant CODELL GRIFFIN, a/k/a "Cody", sold 25 quarter-spoons of heroin in New York, New York.
2. In or about 1972, the defendant CODELL GRIFFIN, a/k/a "Cody", sold large amounts of heroin in quarter-spoon quantities in New York, New York.
3. From in or about January, 1973, up to on or about September 27, 1973, the defendant CODELL GRIFFIN, a/k/a "Cody", sold large amounts of heroin in quarter-spoon quantities in at New York, New York.
4. In or about April, 1974, the defendant CODELL GRIFFIN, a/k/a "Cody", purchased 1/2 kilogram of heroin for \$16,500 in New York, New York.
5. In or about May, 1974, the defendant CODELL

A 022⁻

GRIFFIN, a/k/a "Cody", purchased 1/2 kilogram of heroin for \$16,500 in Bronx, New York.

6. In or about June, 1974, the defendant CODELL GRIFFIN, a/k/a "Cody", purchased 1/2 kilogram of heroin for \$16,500 in New York, New York.

7. In or about April, 1975, the defendant CODELL GRIFFIN, a/k/a "Cody", sold 200 quarter-spoons of heroin in New York, New York.

8. In or about May, 1975, the defendant DONNA FORTE delivered 100 quarter-spoons of heroin to another person in New York, New York.

9. From in or about June, 1975, up to on or about December 31, 1975, the defendants JOHN D. BRYANT, a/k/a "Gypsy", and ROBERT CHARLES BURNSIDE, a/k/a "Rico", sold large amounts of heroin in quarter-spoons quantities in New York, New York.

10. From in or about June, 1975, up to on or about December 31, 1975, the defendant JOHN DOE, a/k/a "Roy", a/k/a "Leroy Sullivan", delivered large amounts of heroin in quarter-spoon quantities to defendants JOHN D. BRYANT, a/k/a "Gypsy", and ROBERT CHARLES BURNSIDE, a/k/a "Rico", in New York, New York.

11. From in or about June, 1975, up to on or about December 31, 1975, the defendants CODELL GRIFFIN, a/k/a "Cody", and WILLIE J. GRIFFIN, a/k/a "Bill", received

A 023

large amounts of money daily from JOHN D. BRYANT, a/k/a "Gypsy", and ROBERT CHARLES BURNSIDE, a/k/a "Rico", in New York, New York.

12. In or about September, 1975, the defendant DONNA FORTE had a telephone conversation with an individual in Greenville, South Carolina.

13. In or about September, 1975, the defendant DONNA FORTE received 50 quarter-spoons of heroin from defendant CODELL GRIFFIN, a/k/a "Cody", in New York, New York.

14. On September 12, 1975, the defendant CODELL GRIFFIN, a/k/a "Cody", negotiated the sale of two ounces of heroin to another person in New York, New York.

15. On December 16, 1975, the defendant CODELL GRIFFIN, a/k/a "Cody", sold 1/8 kilogram of heroin for \$4,500 in New York, New York.

16. On or about February 13, 1976, defendants CODELL GRIFFIN, a/k/a "Cody", WILLIE J. GRIFFIN, a/k/a "Bill", and John Doe, a/k/a "Roy", a/k/a "Leroy Sullivan", sold 100 quarter-spoons of heroin for \$4,500 in New York, New York.

17. From in or about February, 1976, up to and including July 22, 1976, the defendants CODELL GRIFFIN, a/k/a "Cody", WILLIE J. GRIFFIN, a/k/a "Bill", JEROME HATTON, a/k/a "Jew", and JOHN DOE, a/k/a "Roy", a/k/a "Leroy Sullivan", sold large amounts of heroin in quarter-spoon quantities in New York, New York.

A 024-

18. On or about March 24, 1976, the defendant CODELL GRIFFIN, a/k/a "Cody", discussed the sale of 1/8 kilogram of heroin for \$6,100 in New York, New York.

19. On or about March 27, 1976, the defendant CODELL GRIFFIN, a/k/a "Cody", discussed the sale of 1/8 kilogram of heroin for \$6,100 in New York, New York.

20. On or about March 30, 1976, the defendant CODELL GRIFFIN, a/k/a "Cody", discussed the sale of 1/8 kilogram of heroin for \$6,100 in New York, New York.

21. On or about April 9, 1976, the defendant CODELL GRIFFIN, a/k/a "Cody", discussed the sale of 1/8 kilogram of heroin for \$6,100 in New York, New York.

22. On or about June 28, 1976, the defendants CODELL GRIFFIN, a/k/a "Cody", and JEROME HATTON, a/k/a "Jew", sold 100 quarter-spoons of heroin in New York, New York.

23. On or about June 29, 1976, the defendants, CODELL GRIFFIN, a/k/a "Cody", and THOMAS BOYKIN, JR., a/k/a "Monk", sold 29 quarter-spoons of heroin for \$1,200 in New York, New York.

24. On or about July 14, 1976, the defendants CODELL GRIFFIN, a/k/a "Cody", and KENNETH IVERY, a/k/a "Kenny", sold 40 quarter-spoons of heroin for \$1,600 in New York, New York.

A 025

25. On or about July 14, 1976, the defendant KENNETH IVERY, a/k/a "Kenny", sold 79 quarterspoons of heroin for \$3,100 in New York, New York.

(Title 21, United States Code, Section 846.)

COUNT TWO

The Grand Jury further charges:

From on or about the 1st day of September, 1971, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, CODELL GRIFFIN, a/k/a "Cody", the defendant, unlawfully, wilfully, intentionally and knowingly did engage in a continuing criminal enterprise in that he unlawfully, wilfully, and intentionally and knowingly did violate Title 21, United States Code, Sections 812, 841(a)(1), 841(b)(1) (A) and 846 as alleged in Counts One, Three through Six and Eight through Twelve of this indictment, which are incorporated by reference herein, and did commit other violations of said statutes, which violations were part of a continuing series of violations of said statutes undertaken by the defendant in concert with five or more other persons, with respect to whom the defendant CODELL GRIFFIN, a/k/a "Cody", occupied a position of organizer, supervisor and manager, and from which continuing series of violations the defendant CODELL GRIFFIN, a/k/a "Cody", obtained substantial income and resources.

From his engagement in the aforesaid continuing criminal enterprise, the defendant CODELL GRIFFIN, a/k/a "Cody", obtained profits and property which shall be forfeited pursuant to Title 21, United States Code, Section 848(a)(2).

(Title 21, United States Code, Section 848.)

A 026-

COUNT THREE

In or about April, 1974, in the Southern District of New York, CODELL GRIFFIN, a/k/a/ "Cody", the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately 1/2 kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT FOUR

The Grand Jury further charges:

In or about May, 1974, in the Southern District of New York, CODELL GRIFFIN, a/k/a "Cody", the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately 1/2 kilogram of heroin.

(Title 21, United States Codes, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

A 027

COUNT FIVE

The Grand Jury further charges:

In or about June, 1974, in the Southern District of New York, CODELL GRIFFIN, a/k/a "Cody" the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately 1/2 kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

COUNT SIX

The Grand Jury further charges:

In or about April, 1975, in the Southern District of New York, CODELL GRIFFIN, a/k/a "Cody", the defendant, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule I controlled substance, to wit, approximately 200 quarter-spoons of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(B); Title 18, United States Code, Section 2.)

A 028-

COUNT SEVEN

In or about September, 1975, in the Southern District of New York, DONNA FORTE, the defendant, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule I controlled substance, to wit, approximately 50 quarter-spoons of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(B); Title 18, United States Code, Section 2.)

COUNT EIGHT

The Grand Jury further charges:

On or about the 16th day of December, 1975, in the Southern District of New York, CODELL GRIFFIN, a/k/a "Cody", the defendant, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule I controlled substance, to wit, approximately 1/8 kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(B); Title 18, United States Code, Section 2.)

A 029

COUNT NINE

The Grand Jury further charges:

On or about the 13th day of February, 1976, in the Southern District of New York, CODELL GRIFFIN, a/k/a "Cody", WILLIE J. GRIFFIN, a/k/a "Bill", and JOHN DOE, a/k/a "Roy", a/k/a "Leroy Sullivan", the defendants, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule I controlled substance, to wit, approximately 100 quarter-spoons of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(B); Title 18, United States Code, Section 2.)

COUNT TEN

The Grand Jury further charges:

On or about the 28th day of June, 1976, in the Southern District of New York, CODELL GRIFFIN, a/k/a "Cody", and JEROME HATTON, a/k/a, "Jew", the defendants, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule I controlled substance, to wit, approximately 100 quarter-spoons of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(B); Title 18, States Code, Section 2.)

A 030-

On or about the 29th day of June, 1976
in the Southern District of New York, CODELL GRIFFIN, a/k/a/
"Cody", and THOMAS BOYKIN, JR., a/k/a/ "monk", the defendants,
unlawfully, wilfully and knowingly did distribute and
possess with intent to distribute a Schedule I controlled
substance, to wit, approximately 29 quarter-spoons of heroin.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(B); Title 18,
United States Code, Section 2.)

COUNT TWELVE

The Grand Jury further charges:

On or about the 14th day of July, 1976 in the
Southern District of New York, CODELL GRIFFIN, a/k/a "Cody",
and KENNETH IVERY, a/k/a "Kenny," the defendants, unlawfully,
wilfully and knowingly did distribute and possess with
intent to distribute a Schedule I controlled substance,
to wit, approximately 40 quarter-spoons of heroin.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(B); Title 18, United
States Code, Section 2.)

COUNT THIRTEEN

The Grand Jury further charges:

On or about the 14th day of July, 1976 in the
Southern District of New York, KENNETH IVERY, a/k/a "Kenny,"
the defendants, unlawfully, wilfully and knowingly did
distribute and possess with intent to distribute a Schedule I

A 031-

controlled substance, to wit, approximately 79 quarter-
spoons of heroin.

(Title 21, United States Code, Section 812,
841)a)(1) and 841)b)(1)(B); Title 18, United
States Code, Section 2.)

Wm. R. Jensen
Foreman

Robert B. Fiske, Jr.
ROBERT B. FISKE, JR.
United States Attorney

A 032-

UNITED STATES OF AMERICA,

-v-

ROBERT CHARLES BURNSIDE,

Defendant.

: INFORMATION (W.K.)

: Section 851
: of Title 21, U.S.C.,
: relating to Indictment
: 76 Cr. 938 filed the
: 5th day of October 1976

-----x
I, ROBERT B. FISKE, JR., United States Attorney
for the Southern District of New York, do accuse the defendant
above-named who is also named in Indictment 76 Cr. 938 of
having been previously convicted as herein below described.

The said defendant, on or about the 22nd day of
March, 1973, in the Southern District of New York was duly
convicted on Indictment 73 Cr. 34 of conspiracy to distribute
heroin and cocaine in violation of Title 21, United States Code,
Section 846.

Robert B. Fiske, Jr.
ROBERT B. FISKE, JR.
United States Attorney

RECORD TRANSCRIPTS OF PROCEEDINGS

REFERRED TO IN APPELLANT'S BRIEF

T.80 (8-25); T. 82 (2-25); T. 93 (8-250

T.95 (3-22); T. 58 (21); T. 59-61,62 (2-12)

T.260 (2-23) T. 124, 125, T. 961 (16-25

T.962 (3-25); T. 963; T. 126 (20-22)

T.963 (4-13; T. 127 (12-19); T. 137 (3-21)

T.146 (17-19)

1 dwrf 32

J. W. Bryant-direct

80

2 A That is him sitting on the end with the blue
3 sweater.

4 MR. WELLS: Indicating Bill, William Griffin.

5 THE COURT: All right.

6 Q Would you tell us when and where was the first
7 time you saw Bill?

8 A He was in the block once of 116th Street
9 between 7th and 9th.

10 Q And did there come a time when he came into
11 117 West 116th Street?

12 A Yes.

13 Q And approximately when was that?

14 A That was in the month of June, also.

15 Q 1975?

16 A Yes.

17 Q Will you tell us what he did when he came into the
18 shop on that occasion?

19 A My brother gave him some money.

20 Q Do you recall how much money he received on that
21 occasion?

22 A Approximately the same figure.

23 Q Did your brother, Gypsy, tell you who Bill
24 Griffin was at that time?

25 A No, sir, he didn't.

ffin

1 ards 1 James Bryant - direct

Tk5

2 Q Can you describe how it was sold out of 117

am

3 West 116th Street?

4 A How it was being sold?

5 Q Yes. what was going on in 117 West 116th Street
6 and who was doing anything?

7 A My brother would get 100 quarters from Roy and
8 carry them across the street and from there I would go and
9 get them and bring them back to 117 and sell them.

10 Q Do you know how your brother came to get the
11 quarters from Roy?

12 A Not at that time I didn't.

13 Q Did you subsequently learn how your brother came
14 to get quarters from --

15 MR. SCHMUKLER: I object and move to strike the
16 previous answer as apparently not based on personal know-
17 ledge.

18 THE COURT: Overruled. He says he didn't know
19 at the time and now we are finding out if he did know.

20 Q Do you recall when you learned how your brother
21 got the quarters from Roy?

22 A Yes. He would place his order with Bill.

23 Q When did you learn that?

24 A This was on the latter part of June or early
25 part of July.

1 ards 12

James Bryant - direct

2 I became addicted again. This went on seven or eight times.

3 THE COURT: I see. Your new addiction started
4 in June or so of 1975?

5 THE WITNESS: Yes.

6 Q Are you now using narcotics?

7 A No, I am not.

8 Q Did there come a time in 1975 when you began
9 selling heroin for yourself?

10 A Yes, I did.

11 Q When was that?

12 A Around the 7th or 8th of September, 1975.

13 Q Can you tell us how you remember the date?

14 A That is when I first met the girl I was going
15 with at that time. Right after that I started selling for
16 myself.

17 Q Tell us how that came about that you started
18 selling for yourself.

19 A I went to Bill and I asked him, I need to make
20 some money by myself.

21 We made up an agreement and I got 50 quarters from
22 Bill and started selling for myself.

23 Q When you say you went to him, you received 50
24 quarters and did you get them from him?

25 A No, Bill told Roy to give them to me.

ards 14

James Bryant - direct

95

package.

Q Who would you pay for the package?

A Give the money to Bill.

Q Give it to him yourself?

A Yes.

Q Where would you give it to him?

A At 117, wherever he was at.

Q How long did you sell heroin for yourself?

A Until around December.

Q Where were you selling your heroin other than
New York?

A Boston and Virginia.

Q After you started selling heroin for yourself,
how frequently did you receive quarters?

A Two or three times a week.

Q How much would you be receiving when you did
receive it?

A 50 quarters.

Q Every time almost?

A Yes.

THE COURT: Pick any time in the next five
minutes for a break.

MR. GARNETT: All right, your Honor.

Q When you received your quarters, from whom did

1 dwrf 10

2 MR. GARNETT: No, I wasn't, your Honor. That
3 is merely in response to a comment that Mr. Schmukler
4 made.

5 (Jury returns to courtroom.)

6 (In open court.)

7 J A M E S W. B R Y A N T, called as a
8 witness by the Government, being first duly sworn,
9 testified as follows:

10 MR. GARNETT: May I proceed?

11 THE COURT: Yes.

12 DIRECT EXAMINATION

13 BY MR. GARNETT:

14 Q Mr. Bryant, would you keep your voice up so that
15 everyone in the courtroom can hear you.

16 How old are you, Mr. Bryant?

17 A 44.

18 Q Have you ever been convicted of any crimes?

19 A Yes, I have.

20 Q Specifically I direct your attention to 1963
21 and ask you were you convicted of petty larceny?

22 A Yes, I were.

23 Q Would you tell us what the sentence was that you
24 received?

25 A I received 30 days.

dwrf 11

J. W. Bryant-direct

59

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Q In 1964 ~~were~~ you convicted for jostling?

A Yes, I were.

Q Will you tell us what that sentence was?

A I received 60 days.

THE COURT: How many?

THE WITNESS: 60 days.

THE COURT: 60. You might tell them what jostling means.

Q What is jostling, Mr. Bryant?

A Pickpocketing.

Q Also in 1964 were you convicted of using narcotics?

A Yes, I were.

Q Would you tell us what sentence --

A Will you repeat that?

Q 1964 in New Brunswick, New Jersey, were you convicted of using narcotics?

A Yes, I got 30 days under the influence of narcotics.

Q Again in 1964 were you convicted of shoplifting?

A Yes, I were.

Q Would you tell us what that sentence was?

A Four months.

Q Well, directing your attention to Bridgeport -- Stamford, Connecticut. Were you convicted of a shoplifting

dwrf 12

J. W. Bryant-direct

60

1 charge then in 1964?

2 A Yes, I were.

3 Q What was the sentence you received?

4 A One to three.

5 Q One to three years?

6 A Yes.

7 Q How much time did you serve?

8 A About 16 months.

9 THE COURT: Where did you serve that?

10 THE WITNESS: Connecticut State Prison.

11 Q Now, direct your attention to 1966 and I ask
12 you were you convicted of a conspiracy to violate the
13 narcotics laws?
14

15 A Yes, I were.

16 Q In what state was that?

17 A Connecticut.

18 Q Did you receive a sentence in connection with
19 that conviction?

20 A Two to five.

21 Q How much time did you serve?

22 A Approximately 28 months.

23 Q In 1969 were you convicted of larceny?

24 A Yes, I were.

25 Q Was that in New Jersey?

dwrf 13

J. W. Bryant-direct

61

1
2 A Yes.

3 Q What was your sentence?

4 A 30 days.

5 Q In 1970 were you convicted again of shoplifting?

6 A Yes, I were.

7 Q Where was that?

8 A Virginia.

9 Q How much --

10 MR. SCHMUKLER: I'm sorry, I didn't hear.

11 Where was that.

12 THE COURT: Virginia.

13 Q How much of a sentence did you get on that
14 conviction?

15 A Six months and a \$25 fine.

16 Q Finally in 1972, were you convicted for the
17 possession of a narcotic drug?

18 A 1972?

19 Q 1972, were you convicted?

20 A Yes, I was.

21 Q For violation of the Drug Control Act?

22 A Yes, I were.

23 Q Where was that?

24 A Virginia.

25 Q What sentence did you receive?

1 dwrf 14

J. W. Bryant-direct

62

2 A Six years. _

3 Q How much of that sentence did you serve?

4 A About 38 or 39 months, around there.

5 THE COURT: That is in Virginia State?

6 THE WITNESS: Virginia State Prison.

7 Q Do you currently have pending an indictment
8 in the criminal courts of the City of New York?

9 A Yes, I have.

10 Q On what charge have you been indicted?

11 A Burglary.

12 THE COURT: Burglary?

13 THE WITNESS: Yes.

14 Q Did there come a time in February of 1976 when you
15 became an informant for the Drug Enforcement Administration?

16 A Yes, I did.

17 Q Since that time how many cases have you been
18 involved in with the Drug Enforcement Administration?

19 A One.

20 Q Is that the case that is now here on trial?

21 A Yes.

22 Q In connection with your work on that case have
23 you received any monies from the Drug Enforcement Administra-
24 tion?

25 A Yes, I did.

ards 13 James Bryant - cross

Q Where did you get that cash from?

A I got it from the DEA.

Q The Drug Enforcement Administration put up your bail for you?

A No, they didn't put it up.

Q They just gave you the cash?

A Yes.

THE COURT: Did they know what you wanted the cash for?

THE WITNESS: No.

Q How did you get in touch with them?

A Pardon?

Q How did you get in touch with them?

A They got in touch with me.

Q They found you in jail?

A Yes.

Q Who found you there?

A Sam.

Q Who?

A Sam Blackburn.

Q Did he visit you in prison?

A No, they didn't visit me at the prison.

Q After you got arrested and went to court and the judge fixed \$1500 bail, you were sent to jail, weren't

1 ards 7 James Bryant - direct

2 package. He told me to get the money.

3 I go back, got \$1000 of the money. I went back to
4 Cody and Cody wouldn't accept \$1000. He said, "Let's hold
5 on to it until the package arrives."

6 Thereafter Bill and Roy came up with a black Mercury
7 and got out of the car with a yellow bag and went across
8 the street.

9 At this time Cody came across the street and all of
10 us went in the hallway.

11 Q Where were you?

12 A Pardon?

13 Q Where were you when Bill and Roy drove up?

14 A Across the street.

15 Q Where?

16 A At 116 Street, standing in front of around 125
17 or something like that.

18 Q Where was Agent Blackburn?

19 A Sitting in the car.

20 Q How far was that from you?

21 A I was standing at the curb and he was sitting
22 in the car. The distance from here to the end of the table.

23 Q What happened after Bill and Roy drove up in
24 the black Mercury?

25 A They got out of the car.

1 ards 8 James Bryant - direct

2 Q Where were they when they arrived or parked?

3 A On the opposite side of the street. Roy went
4 across to the building. Bill spoke to Cody. Cody and I came
5 back across the street and Cody called me. We went in the
6 hallway.

7 Q What did he say?

8 A He said, "Come over here."

9 Q What did you do?

10 A I went into the hallway, Cody asked did I have
11 the money. I told him no.

12 I went back to Sam and got the money and brought it
13 back.

14 Q How much money did you get from Sam Blackburn?

15 A \$500.

16 Q What did you do next?

17 A I gave it to Cody. Roy came down the stairs and
18 took two packages from under the belt and I put them in the
19 bag and left from the hallway.

20 Q Let's back up a moment. You say you took the
21 money from Sam Blackburn?

22 A Right.

23 Q What did you do with it after you got the money
24 from Blackburn? You were standing at the curb?

25 A Sam was in the car. He passed me the bag out of

1 ards 9 Blackbburn - direct

2 A Yes, I did.

3 Q After you met him what did you do on February 13?

4 A After I met Kid on 110th we went to 116 Street.

5 At that time we sat in the car and waited for Codell Griffin
6 to arrive.

7 A while later I observed Codell Griffin walking up
8 116 Street from Seventh Avenue toward Lenox Avenue.

9 Kid got out of the car, walked over to Cody, had a
10 came back to me.

11 I asked Kid if the heroin was ready. He said that --

12 MR. SCHMUKLER: Objection, your Honor.

13 THE COURT: Don't tell us that.

14 A I had a conversation with Kid. We waited until
15 the heroin was ready.

16 A short time later while sitting in the car I observed
17 Willie Griffin and Roy arrive in a Black Mercury and double-
18 park in front of 125-127 West 116 Street. Roy got out of
19 the car with a yellow shopping bag under his arm and walked
20 into the building.

21 Bill continued to drive up in front of Jimmy Daniels'
22 Bar where he parked. After he parked the car he got out and
23 walked directly to Cody, then spoke with Cody.

24 Q You referred to this person as Bill. You earlier
25 referred to a Willie Griffin. Did you know him by any name

1 ards 10

Blackburn - direct

962

2 on February 13?

3 A At the time I knew him as Bill.

4 Q Do you see him in the courtroom today?

5 A Yes.

6 Q Would you point him out for us?

7 A The gentleman at the end of the table with the
8 gray jacket.

9 MR. WELLS: Indicating Willie Griffin.

10 THE COURT: All right.

11 Q You say you saw him approach Cody and talk to
12 him?

13 A Yes.

14 Q What happened after that?

15 A After Bill and Cody talked they were joined a
16 short time later by another person. After appearing to
17 engage in conversation a short while, Cody and Bill crossed
18 116 Street, walked past Kid and I standing on the sidewalk
19 and told Kid, "Come on, Kid."

20 Q Who said that?

21 A Codell Griffin called out to Kid and said, "Come
22 on, Kid."23 The three of them then entered a hallway where Roy
24 had entered carrying the shopping bag under his arm.

25 Kid stayed in the hallway with Cody and Bill. A couple

1 ards 10

Blackburn - direct

962

2 on February 13?

3 A At the time I knew him as Bill.

4 Q Do you see him in the courtroom today?

5 A Yes.

6 Q Would you point him out for us?

7 A The gentleman at the end of the table with the
8 gray jacket.

9 MR. WELLS: Indicating Willie Griffin.

10 THE COURT: All right.

11 Q You say you saw him approach Cody and talk to
12 him?

13 A Yes.

14 Q What happened after that?

15 A After Bill and Cody talked they were joined a
16 short time later by another person. After appearing to
17 engage in conversation a short while, Cody and Bill crossed
18 116 Street, walked past Kid and I standing on the sidewalk
19 and told Kid, "Come on, Kid."

20 Q Who said that?

21 A Codell Griffin called out to Kid and said, "Come
22 on, Kid."

23 The three of them then entered a hallway where Roy
24 had entered carrying the shopping bag under his arm.

25 Kid stayed in the hallway with Cody and Bill. A couple

1 ards 11 Blackburn - direct
2 of seconds after which he came back out and I was told to
3 get the money.

4 I walked past the doorway of 125-127. I looked in
5 and saw Codell Griffin and Bill standing in the hallway.

6 I went, retrieved the money in a blue flight bag,
7 gave the money to Kid who then walked ahead of me and entered
8 the apartment building. As he did, I delayed and walked
9 past. I saw Kid meeting with Codell Griffin. I continued
10 past and stood by the doorway by the stoop there.

11 A short time later Bill walked out followed by Roy,
12 followed by Cody, followed by Kid who had the blue flight
13 bag.

14 When Kid came out I asked Kid where the stuff was --

15 MR. SCHMUKLER: Objection, your Honor.

16 THE COURT: This conversation was not in Cody's
17 presence?

18 THE WITNESS: Skip the conversation.

19 A We had a conversation. Kid then handed me the
20 blue flight bag and I looked in the flight bag and I saw the
21 100 quarters of heroin contained in a brown paper bag.

22 Q What did you see when you looked in the bag?

23 A Brown neatly wrapped packages.

24 Q One package? What did you see when you looked
25 in there, one package or individual packages?

1 ards 9 James Bryant - direct

2 the car. I went back into the hallway, gave the money to
3 Cody.

4 Roy gave me the package, I put the package in the
5 bag and left out of the hallway and went back to the car.

6 Q When you gave the money to Cody was Roy there?

7 A No, he wasn't there at the time.

8 Q What happened after you gave the money to Cody?

9 A At this time Cody hollered, Roy, and Roy came
10 down the stairs, brought the two packages. I take them and
11 put them in the bag and went back to the car.

12 Q Where were they when he came down?

13 A Under his belt.

14 Q What happened after you left the hallway with
15 the heroin?

16 A I left there, went back to the car, got in the
17 car. Agent Blackburn took one of those field test devices
18 and put some of the stuff in one of the devices and tested
19 it and went to the DEA headquarters.

20 Q Who was present in that hallway other than your-
21 self?

22 A Myself, Cody and Roy.

23 Q I direct your attention to March 4, 1976, and ask
24 you did there come a time when you had a telephone conversa-
25 tion with Bill Griffin?

1 ards 10 James Bryant - direct

2 A Yes, I did.

3 Q Would you tell us how that conversation came
4 about?

5 A I called Bill.

6 Q Where were you when you made the conversation?

7 A DEA headquarters.

8 Q Where did you call?

9 A I called a store that is in 116 Street.

10 Q What happened after you placed the call, after
11 you dialed the number?

12 A I dialed the number, I tried to get Cody. I
13 couldn't get in touch with Cody and asked was Bill there.
14 Somebody said yes.

15 I spoke to Bill and asked him was Cody there. He said
16 no.

17 I told him that my man showed and wanted to cop.

18 He said Cody is not here, he may be here later on and
19 that was the end of the conversation.

20 Q To your knowledge was that conversation recorded?

21 A Yes, it was.

22 Q Directing your attention to the next day, March
23 5, 1976, I ask you did there come a time when you met Agent
24 Blackburn at 12th Street and the Pier in Manhattan on the
25 West Side?

1 dwrf 4

2 happen?

3 A Yeah, Bill came up to the car and Agent Blackburn
4 tried to talk to him and he wouldn't acknowledge him.
5 Bill just shook his head, and from there we drove on off.

6 Q Did you hear what Blackburn said to Bill?

7 A Pardon?

8 Q Did you hear what Blackburn said to Bill?

9 A It wasn't nothing but a lot of swearing going on,
10 and --

11 Q Swearing about what?

12 A Like, who did Cody think he were, you know,
13 and Sam was supposed to be just as big as Cody and
14 a lot of swearing and cursing going on, and he didn't
15 have to go in no alleys to do no business, and et
16 cetera.

17 MR. WELLS: Pardon me, may we have to the best
18 of this witness' recollection who it was that was saying
19 that? We are allegedly talking about a conversation
20 between two people.

21 A Agent Blackburn was doing all the talking.

22 MR. WELLS: Doing all the talking and --

23 MR. GARNETT: Your Honor, I am conducting this
24 direct examination. If I might be allowed we might be
25 able to answer these comments.

1 dwrf 13

J. W. Bryant-direct

2 Q Now, during your conversation with Bill what
3 else was said to you and what did you say?

4 A We talked in general, and he told me about
5 my brother wanted some money, and at that time I asked
6 him, you know, was Cody around. He said, no, and then--

7 THE COURT: Sort of what?

8 THE WITNESS: He told me about my brother wanted
9 some money, and we talked in general, and then he asked
10 me what did I want. I told him I wanted 75, 80 quarters.

11 So he said he will let me have them for,
12 he say, "I will let you have them for the
13 \$35."

14 So I said, "I don't want them."

15 THE COURT: Let you have 35 what?

16 THE WITNESS: \$35, a quarter. And I said, "No,
17 I don't want them, man, because you not going to let
18 me have them for the price that I can get them from
19 Cody for."

20 Q Did anything happen after that?

21 A No, was nothing but a conversation, and Cody
22 didn't arrive and we got in the car and left.

23 THE COURT: Who is "we"?

24 THE WITNESS: Agent Mary and I.

25 Q Now I direct your attention to June 26, 1976

COURT'S CHARGE TO THE JURY

1 pgrf 10

2 A 055-
CHARGE OF THE COURT

3 Judge Knapp

4 THE COURT: Ladies and gentlemen, let's not
5 in the jury room or elsewhere discuss this episode.

6 It is over. I will question to something:

7 I had the clerk remove the two newspapers that
8 were in the jury room. Put in a voucher to the Government
9 when the case is over.

10 JUROR NO. 4: Mine is in my case. If he wants
11 to take it out of the bag he can.

12 THE COURT: If it is in the bag, don't take it out.
13 As long as it is not laying around.

14 You might give it to the clerk when you go out
15 the next time.

16 In the first place, I want to point out, as
17 I have to the witnesses, this is a large courtroom and
18 the acoustics are bad. In a small, shorter case I charge
19 by just talking to you and that is easy. When you get
20 to a long case, your charge tends to become too prolix so
21 I will probably follow my notes fairly carefully, and that
22 naturally has the result of my putting my head down.
23 It may have the result of my dropping my voice. So if that
24 should happen and anybody has any difficulty hearing me,
25 I would take it as a favor if you raise your hand or in some

A 056⁻

1 pgrf 11

2 way indicate that I am not speaking loud enough; and of
3 course, Ms. Hines and Mr. Rivers, I am addressing the
4 jury over there, but you and your clients are entitled
5 to hear what I say, so if you don't hear, either of you,
6 I will take it as a favor if you call that to my attention.
7 The same applies to everybody else also.

8 First let me remind you what the procedure is
9 going to be.

10 I am going to charge you with what I believe to
11 be the rules applicable to this case. Then I am going
12 to excuse you for a while, then counsel will make suggestions
13 and criticisms and tell me what they may think was wrong
14 with what I said. They may think I left something out
15 or they may think I said something wrong.

16 After I have heard that, then I will call you back
17 and give you your final instructions, your housekeeping
18 instructions, and commit the case to you.

19 I mention that now because when I excuse you that
20 will be the last time I will say don't discuss the case or
21 form or express any opinion.

22 It is my purpose to give you the correct law
23 now but as you may have observed in the course of the trial
24 I am not infallible and it may well be that one counsel
25 or another may convince me that I said something materially
wrong, or I have left something out, that is very important

A 057-

1 parf 12

2 and that might have an important bearing on your decision
3 in the case. So don't start solidifying your mind
4 and taking positions until I have had a chance to give
5 you your final instructions.

6 First I will give you certain basic principles
7 of law that are applicable to all cases, and then I will
8 come down to the legal principles that concern the
9 particular charges in this particular indictment.

10 The first basic principle is, as I have told you
11 before, it is you who must make the decision as to the
12 facts. Your decision is absolutely final on that.
13 Nothing I may say on the subject or nothing you may think
14 on the subject should have any bearing on your decision.
15 I can give you lots of **reasons for that.**

16 It may surprise you to learn that I don't have to
17 tell you that if I don't want to.

18 Under federal law I may, if I want to, tell you
19 exactly what I think or thought of every witness that
20 testified, tell you whether I thought he or she was telling
21 the truth and what the significance of that testimony was,
22 just so long as I made it clear to you that you are the
23 final arbitrators.

24 Why do I tell you this if I do not intend to do
25 it? I want to tell you that I have that power so that you

A 058

pg 13

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2 know, realize, that I am not giving you this because
3 I have to satisfy some rubric in the law. I am telling
4 you this about the importance of eliminating my thinking
5 from your thinking, simply because it is my deep and
6 basic conviction that unless the jury follows that
7 particular instruction justice may not be done in this case

8 I just feel that very strongly and I want you
9 to know how strongly I feel.

10 Anything I may have done during the course of
11 the trial to indicate an impression is not only meaningless
12 but should be ignored, and it should not be permitted in
13 any way, shape or form to confuse or get in the way of
14 your responsibility of finding the facts in this case.

15 As finders of the facts you will, of course,
16 be judges of the credibility of the witnesses. There is
17 no mystery about how you judge the credibility of witnesses.
18 Every day in your life you have occasion to judge the
19 credibility of people with whom you come into contact:
20 members of your family, your friends, business associates,
21 competitors, everybody who speaks to you wants you to
22 believe what he or she says, and in the course of your
23 daily existence you develop certain criteria or antenna
24 by which you judge the weight you will put on what people
25 are saying to you.

A 059-

pgrf 14

The theory of the jury system is that it is better to have the judgment of 12 persons than have the judgment of one person.

After all, if any one person has to make a decision as to the credibility of any witnesses or all the witnesses, he or she would have only one set of life experiences to go by.

You have 12 such sets, since there are 12 of you who will have the case submitted to you.

And the law says, and I agree with it, that a sounder result is reached if you pool your common **impressions** and your common judgments as to the various witnesses who appear before you.

Of course, that will only work if you do what the law contemplates; that means listen with open minds to the witness and listen to each other with open minds, and put your views before your fellows and consider their views, and therefore arrive at the consensus of common judgment that the law contemplates.

Incidentally, your functions in this regard is the rule that your recollection of the facts controls: as I have told you, what I may remember, or counsel may remember, is wholly irrelevant. It is your recollection that controls, and if you have any question about anything

1 pgrf 15

A 060

2 that seems important to you, you can have the stenographer
3 read back the pertinent parts of the testimony. Even then
4 if you disagree with what the stenographer reads back
5 your recollection controls.

6 We are all fallible and you may be fallible
7 too but the law places the responsibility on you. If
8 your recollection differs from what the stenographer reads,
9 if after giving due weight to his expertise you still
10 think your recollection is different from his, it is
11 your recollection that must control. You will not do that
12 readily and I don't suppose it is done often
13 but I just mention it to illustrate the quality of your
14 judgment.

15 Your judgment as to what the facts are is supreme.

16 Now the law does give certain guidelines. One
17 is that you are entitled to take into account the interest
18 any witness may have in the outcome of this case.

19 You heard the Government argue that Donna Forte's mother was
20 interested in the outcome. The defendants on the other hand
21 claim various Government witnesses, including the
22 Government agents, had an interest in the outcome and
23 therefore a motive to falsify.

24 The point is that it is for you to say whether
25 and to what extent any witness has an interest in the

1 pgrf 16

A 001

2 outcome of the case and, if so, whether and to what
3 extent such interest has influenced his or her testimony
4 before you.

5 Obviously you don't reject a witness out of
6 hand because he or she may have an interest, but you
7 consider the extent of such interest and decide what
8 effect, if any, it had on the testimony. Isn't that what
9 you do in every day life? Most people who talk to you have
10 an interest in having you believe what they say, other-
11 wise by and large they would not bother to say it.

12 In every day life you take interest into account
13 in evaluating what they tell you, and that is precisely
14 what you do in the jury room.

15 With respect to the witnesses, James Bryant,
16 Kid, and Leander Clarke, there is related consideration
17 that comes into play. According to their own testimony
18 these witnesses are guilty of the very conspiracy charged
19 against these defendants. The law calls any such person
20 an accomplice. An accomplice is a man or woman who
21 could be convicted of the very same crime that is on
22 trial.

23 The law says you are entitled to act on the
24 testimony of such a person, but that you must subject
25 it to special scrutiny. That is plain common sense.

pg 17

A 062

Obviously, any person subject to prosecution for crimes may either have, or think he has, an interest in ingratiating himself with the Government by testifying on the Government's behalf.

He may think things will go easier for him if the Government likes what he says. Obviously it is more comfortable to be on the witness stand than in the defendant's box. Therefore, the law says -- and it is plain common sense -- that you should take those factors into account in weighing the testimony of such a witness.

However, the law also says if after having taken those factors into account you come to the conclusion that the witness has given truthful testimony, i.e., factually accurate testimony, you may act upon it exactly as you would upon that of any other witness.

Indeed, if you accept testimony, you are bound to act upon it.

With **relation** to informants, that is to say in this case with Country and with Kid after he started to work for the Government, a closely related principle comes into play. In the first place, the chances are that an informant originally became one in order to avoid prosecution. That is I think a fair inference in this case. In the second place, once he has started to take money

pgrf 18

A 062-

for producing information, it is obvious that he might have an interest in making such information appear to be valuable to the Government.

On the other hand, it might be argued that an informant's primary motivation would be to give reliable information because he would realize the possibility of losing favor with the Government should his information turn out to be unreliable.

You have heard the arguments of counsel, all counsel, addressed to the reliability, or lack of it, of these accomplices or informer witnesses -- and I shall neither repeat nor refer to such arguments.

I simply call them to your attention because of the obvious importance of informer and accomplice testimony in this case. I wish to emphasize, however, that these considerations are relevant only to your determination whether the particular witness you are considering has given truthful, that is to say, factually accurate, testimony in this case.

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Let me at this point digress for a moment. I

have spoken at various times about the division of responsibility between the various participants in this trial, the government, defense counsel, myself and yourselves. Let me emphasize that it is no part of your responsibility, or so far as concerns the conduct of this trial, of mine to pass on the propriety or morality of the method by which evidence is obtained.

Some of us may or may not approve of the use of informants, but it is not our responsibility to determine how the government goes about trying to cope with the narcotics traffic. Our sole responsibility, mine in letting evidence be presented to you and yours in considering that evidence, is to determine whether the allegations of this indictment, or any of them, have been established beyond a reasonable doubt.

Let me turn to another illustration of the division of responsibility. You will have noticed that many of the people mentioned in the course of the testimony as having been involved in the course of this alleged conspiracy are not on trial before you. Now, it is no concern of yours nor, for present purposes, of mine why these other persons are not on trial. Our sole concern, as I have indicated, is whether the guilt of these defendants, or any

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of them, has been established beyond a reasonable doubt as to the crimes charged or any of such crimes.

As a related matter, there has been considerable comment and speculation as to why certain witnesses weren't called to testify. In a federal criminal trial both the government and a defendant are entitled to received from Clerk of the Court a subpoena calling for the attendance of a witness, and no matter where the witness lives, so long as it is within the United States, he is required to appear when served with such a subpoena.

Now, there is no evidence before you that any person that has been mentioned could not have been called as a witness. In such a situation, the law is that you may infer from the failure of either side to call a particular person that his or her testimony might have been unfavorable to either the government or to a defendant. However, it is equally within your discretion to draw no inference whatsoever from the failure of the government or a defendant to call any of the persons who have been mentioned.

If a witness is found to be in jail, the counsel involved applies to me for a writ and I produce him pursuant to such a writ.

There is another rule of general application, which is that if you find that any witness who has testified

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2 before you has deliberately lied on a material matter, that
3 is, a matter important to this case, you may, if you wish,
4 reject and disregard anything that particular witness has
5 said. But you are not required to do so. You may reject
6 that part of his or her testimony that you find to be un-
7 truthful and accept and act upon such part as you find
8 truthful.

9 Now, again, that is just common sense. In your
10 ordinary experiences some people may have told you a lie
11 and you say to yourself, "I am never going to believe any-
12 thing he or she may ever say again. Life is too short to
13 be bothered by trying to sort out truth from falsehood so
14 far as this particular person is concerned."

15 On the other hand, you may, after some person
16 has told you even some outrageous lie, consider the motives
17 which caused the person to lie and conclude that in the
18 future you will believe him or her if you find such motives
19 do not exist.

20 Like everything else, you act in the same
21 common sense way you would in your daily lives. Remember,
22 this rule only applies to testimony that is wilfully false;
23 it has no application to mistakes, and that, again, is
24 common sense.

25 Another guideline that the law provides is that

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2 you may, if you wish, consider the fact that a witness be-
3 fore you has previously been convicted of a crime. The
4 theory is that a person who has been convicted of a crime
5 may be considered to be less reliable than one who has not.
6 However, that, as with every other consideration, is a
7 matter that rest entirely in your discretion.

8 Of course, you consider the nature of the
9 crime that he or she may have been convicted of.

10 Another thing you may consider is whether any
11 witness before you has been shown to make a prior statement
12 inconsistent with his or her testimony here on this witness
13 stand. If you find such a prior inconsistent statement to
14 have been made, you should consider the circumstances under
15 which it was made and to what extent it undermines your
16 faith in what the witness said before you.

17 But, again, this is a matter committed entirely
18 to your judgment.

19 The important thing to remember is that all
20 of these guidelines are just what the word implies, princi-
21 ples developed for your guidance.

22 They do not control you. You are the final
23 authority as to the credibility of every bit of testimony
24 that has been laid before you. As to every witness who
25 has testified, you may accept all of his or her testimony

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2 or you may reject it all. Or you may accept some of it and
3 reject the rest.

4 Of course, you will not act quixotically or
5 unreasonably in these matters, but you will apply your sound
6 judgment and common sense to the task before you.

7 You have heard about the ability of the witness
8 called Country to identify respectively the defendants
9 Boykin, i.e. Monk, and Ivery, i.e. Kenny.

10 Of course, when I say Boykin, i.e. Monk, or
11 Ivery, i.e. Kenny, that does not mean that I think he is
12 Monk. I don't know whether he is Monk or not and that is
13 for you to determine.

14 In considering that question you must take
15 into account everything you know about the circumstances
16 in which the witness made his observation of the defendant
17 involved; did the witness have the capacity and adequate
18 opportunity to observe and identify the person with whom
19 he was dealing? Bearing in mind that the witness does not
20 claim ever to have known either of these defendants before
21 the events in question, you will take into account everything
22 you know about the occasions of their meeting -- what were
23 the lighting conditions, how long were the people together,
24 etc.

25 Also, you may take into account the length of

1 time that elapsed between the events in question and the
2 next opportunity of the witness to see the defendant involved.
3 If the witness gave any descriptions of the defendant to
4 the agents or to others, you may also consider the extent,
5 if any, to which such descriptions are inconsistent with
6 the actual appearance of the defendant.
7

8 As you will recollect, in the case of the
9 defendant Thomas Boykin, the government concedes that it
10 relies exclusively on Country to identify him as "Monk"
11 with whom he dealt.

12 With respect to the defendant Kenneth Ivery,
13 or Kenay, on the other hand, the government contends that
14 Country's identification is corroborated by pictures taken
15 immediately after the event and by the testimony of the
16 Agent Jones.

17 The extent of the corroboration as well as the
18 identity or even the identification is entirely for you
19 to determine.

20 Turning to a different topic, perhaps this is
21 a good time to bring up the question of association testi-
22 mony, about which there has been some mention. Where a
23 person is charged with conspiracy, the law allows evidence
24 of association, even wholly innocent association with his
25 alleged co-conspirators, both indicted and unindicted.

1 The theory is that people engaged in a joint
2 enterprise may be more likely to be found together than
3 those not so engaged. But it must be obvious to you that
4 association in and of itself proves nothing. There could
5 be any number of reasons why some of the defendants were
6 found in each other's company. For example, as I indicated
7 when you were being chosen, nothing could be more natural
8 than two brothers associating with each other.
9

10 The point is that after giving it the cautious
11 treatment I have indicated you may use evidence of associa-
12 tion, along with all the other evidence in the case, in
13 determining whether or not guilt has been established beyond
14 a reasonable doubt. I suppose, in the final analysis, it
15 will be your views as to the nature of the association
16 testimony before you that will control what importance, if
17 any, you attach to it.

18 At this point I might interject a thought that
19 I have mentioned from time to time. Obviously, the fact
20 that these defendants are now associating with each other
21 during the trial is of no consequence whatsoever. That
22 association is wholly involuntary.

23 Assuming they had never before seen each
24 other in their respective lives, they would now have a
25 government-induced joint interest in acquittal and,

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2 obviously, that government-induced joint interest is going
3 to cause their lawyers to associate with each other and
4 may well cause them to associate with each other during the
5 course of this trial.

6 No inference of any sort can be drawn from that.
7 Although it sounds obvious when you think about it, I have
8 mentioned this from time to time to rebut the almost in-
9 stinctive human tendency to assume, when you see a group
10 of people working together, that they have probably been
11 doing that in the past.

12 Now, let me turn from guidelines to an important
13 principle of law which is absolutely binding upon you.
14 The doctrine of reasonable doubt. Let me discuss that
15 doctrine with you. When you analyze it, it is common sense.

16 In a civil case all that a plaintiff has to do
17 is establish his case by what is called a preponderance of
18 the evidence, which boils down to mean that if it is more like-
19 ly than not that what the plaintiff has asserted is true,
20 then the jury is entitled to give him his verdict. Now, that
21 may be fine and, indeed, is fine when all that is involved
22 is whether A should pay B some money.

23 But the purpose of the government in bringing
24 a criminal case is to authorize the Court to commit the
25 defendants to jail. And our liberties wouldn't be worth

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2 much if it were possible to put a man in jail simply be-
3 cause his guilt seemed more probable than his innocence.
4 Therefore, the law says guilt must be established beyond
5 a reasonable doubt.

6 There are two words in that definition, "reason-
7 able" and "doubt." The meaning of doubt is self-apparent.

8 The word "reasonable" is, in the last analysis,
9 equally self-defining. It means a doubt for which you
10 can give a reason. It is not just a fanciful doubt or an
11 excuse for ducking a disagreeable duty. Nobody likes to
12 be in the position of convicting a fellow human being. But
13 the law would also be in a sorry state if jurors wouldn't
14 take the responsibility for finding guilt where it is
15 established beyond a reasonable doubt.

16 Also, the "reasonable" part of the term goes
17 to the essence of jury deliberation. If one of you has a
18 doubt and expresses a reason for it, and another juror has
19 no doubt, the expression of your reason for your doubt will
20 probably do one of two things: It will either enable your
21 fellow jurors to demonstrate that your doubt is unreasonable,
22 or it will enable you to demonstrate to him or her that
23 he or she should have a doubt.

24 If you express your doubts or lack of them to
25 each other, you should be able to resolve them one way or

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2 the other. Of course, a doubt, like everything else in
3 this case, a reasonable doubt must be based on the evidence
4 or the lack of evidence, not on something you may have heard
5 on the outside or some impression or opinion you may have
6 derived from the outside. It has to be based on the evi-
7 dence or lack of evidence.

8 Otherwise, how could you discuss it with your
9 fellow jurors? All that you have in common with each other
10 is what you have heard in this courtroom, and it is that
11 common basis upon which you must base your deliberations.

12 In this connection I may point out that while
13 it is your duty to discuss your doubts or lack of them
14 with each other, and listen to each others views, you should
15 adhere to any conscientious opinion which you might hold,
16 and not give it up merely for the sake of unanimity. I
17 don't think there is anything I can add to that.

18 The law simply requires you to do your best to
19 convince your fellow jurors of the correctness of your view
20 and, at the same time, to listen with an open mind to theirs
21 and to make a conscientious effort to reach a result which
22 conforms to the conscientious belief that each of you holds.

23 I assume you are not going to start unanimous.
24 Unanimity comes from discussion among you, an exploration
25 of your doubts or lack of them, and a discussion of the

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2 evidence or lack of evidence on which there is doubt or
3 lack of it. That is how unanimity is achieved.

4 Before I leave the question of reasonable doubt,
5 it being so important, let me read another definition that
6 was given by a judge for whom I have great respect:

7 "It is a doubt based on reason which arises
8 from the evidence or lack of evidence in the case. It is
9 a doubt that appeals to your reason, to your judgment, to
10 your common understanding and your common sense. It is a
11 doubt such as would cause you to hesitate to act in matters
12 of importance in your daily lives. But it is not caprice,
13 whim nor speculation. It is not a doubt that a juror may
14 conjure up to avoid the performance of an unpleasant duty.
15 It is not sympathy for a defendant. Let me repeat: It is
16 a reasonable doubt."

17 That ends the quotation. That, you can see,
18 does not differ from what I said, but I just thought he
19 said it rather well.

20 Closely related to this doctrine of reasonable
21 doubt is the concept of the presumption of innocence. That
22 means that the government has the burden in this case and
23 that such burden never shifts. I have told you that the
24 defendant does not have to prove anything. The point is
25 that the presumption of innocence continues in his favor

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2 throughout the entire trial and remains there in the jury
3 room until you have finally resolved it, if you ever do, by
4 a verdict of guilty.

5 It means this: Right up to the last minute
6 your discussion should include the proposition that the
7 government has the burden, and if the government has not
8 sustained that burden, that that in itself can be the basis
9 of a reasonable doubt.

10 In connection with this presumption of innocence,
11 let me remind you of what I told you when you were being
12 selected and what I again emphasized right after the defend-
13 ants had announced that they rested their cases.

14 These defendants in deciding to rest their
15 cases without themselves taking the witness stand were
16 exercising a right given them by the Constitution of the
17 United States. For reasons I have explained to you, unless
18 you respect that right and refrain from speculating as to
19 why they exercised it, or what they may have said had they
20 otherwise decided, these defendants will not have had a
21 fair trial. I think I need say no more.

22 In discussing the philosophy behind the
23 doctrine of reasonable doubt, I mentioned that one of the
24 purposes of a criminal trial is to authorize the Court to
25 commit a defendant to jail. That brings me to another

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2 illustration of the division of responsibility between us.

3 It is no concern of yours what sentence I may impose on
4 any defendant if your verdict should be one of guilty. That
5 is entirely my responsibility. I trust you to deal with
6 the facts. You must trust me to deal with any responsibility
7 your verdict might impose upon me.

8 One last principle of general application.

9 As I have several times mentioned, the mere fact that these
10 defendants were indicted proves nothing whatsoever. The
11 indictment is a mere procedural device to bring them before
12 you for trial.

13 Let us now turn to the specific charges set
14 forth in the indictment. The first count charges all defend-
15 ants with the crime of conspiracy. You will get a copy of
16 this indictment and this is just to show you what it looks
17 like. (Holding up indictment for the jurors to see.)

18 You have heard a lot about conspiracy during
19 the trial and what is it? How does the law define a crime
20 of conspiracy? It is defined in the statutes of the United
21 States substantially as follows: If two or more persons
22 conspire to violate any statute of the United States and
23 one or more of such persons does an act to effect the object
24 of the conspiracy, all such persons shall be guilty of the
25 crime of consiracy. It is very simple. Let me repeat it:

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2 If two or more persons, any two, conspire to violate a
3 statute of the United States, and one or more of such
4 persons does an act to further the object of the conspiracy,
5 all shall be guilty of the crime of conspiracy.

6 You can readily see that there are three ele-
7 ments of the crime, each of which must be established to
8 your satisfaction beyond a reasonable doubt:

9 First, there has to be a conspiracy;

10 Secnd, the object of the conspiracy has to
11 be to violate a statute of the United States. In this
12 particular case, of course, the statute of the United States
13 claimed to have been violated is the one forbidding the
14 distribution of heroin or the possession of heroin with
15 intent to distribute it.

16 Thirdly, one or more of the conspirators has
17 to do something to effect such unlawful objective.

18 What, then, is a conspiracy? A conspiracy in
19 ordinary layman's language is no more or less than a common
20 undertaking entered into between two or more persons to
21 achieve some unlawful objective.

22 We are always in our daily lives watching
23 people engage common undertakings. If three of you should
24 agree to have lunch together and send one of you ahead to
25 the restaurant to reserve a table and put in the orders,

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2 the three of you would be engaged in a common undertaking.

3 A common undertaking only becomes a conspiracy, however, if
4 the objective is unlawful.

5 You will recollect that it is the government's
6 contention that Codell Griffin was the organizer and principal
7 figure in the conspiracy charged. Your first task, then,
8 is to determine whether Codell Griffin was engaged with one
9 or more persons (whether or not on trial before you) in a
10 common undertaking to possess and distribute heroin.

11 Now, in order to conclude that the defendant
12 Codell Griffin was engaged in such a conspiracy, you must
13 be satisfied beyond a reasonable doubt that he knowingly and
14 wilfully associated himself with others for the express
15 purpose of distributing heroin within the United States,
16 knowing such conduct to be in violation of the laws of the
17 United States.

18 If you conclude such knowing and wilful
19 conspiratorial conduct to have been established on the part
20 of Codell Griffin, you will next consider whether Codell
21 was engaged in one single enterprise during the entire period
22 covered by the evidence which has been laid before you.
23 The reason you must consider this is that such is the charge
24 of the indictment, and under our law where a single conspiracy
25 is charged, a person cannot be convicted upon proof of a

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2 series of separate conspiracies.

3 It is the government's theory that the con-
4 spiracy it claims to have established was a continuing one
5 because Codell was at all times its guiding hand regardless
6 of whether his associates or employees may have changed from
7 time to time, and that the objective of the enterprise has
8 always been the distribution of heroin in the general manner
9 described. That is the government's contention, Codell was
10 the continuing factor throughout the conspiracy, the objective
11 was the same and the government claims it doesn't make any
12 difference whether the persons changed from time to time,
13 his associates.

14 Now, this position that I have just outlined,
15 if established to your satisfaction, you will be justified
16 in finding one single conspiracy. However, before you may
17 convict Codell Griffin, you must be satisfied that the
18 government has established this contention beyond a reason-
19 able doubt.

R2 20 If you are satisfied such a conspiracy existed
21 and that Codell was a part of it, you will consider whether
22 an overt act was committed in furtherance of the conspiracy.
23 It is a peculiarity of the law of conspiracy that mere
24 agreement is no offense. Something has to be done by some-
25 body in furtherance of the conspiracy. Now, the indictment

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2 lists 20 such overt acts, and I will discuss them in greater
3 detail later on and you must find that at least one of those
4 acts was performed by a person mentioned in one of these
5 paragraphs, (the Court holding up the indictment for the jury
6 to see) and it was performed in furtherance of the conspiracy
7 alleged in the indictment.

8 To summarize then, with respect to the defendant
9 Codell Griffin, if you find that he wilfully and knowingly
10 engaged in the conspiracy alleged in the indictment, and that
11 one of the overt acts named in the indictment was performed
12 in furtherance of that conspiracy, you may convict him of the
13 crime of conspiracy charged in the first count of the indict-
14 ment.

15 Now, under the government's theory, none of the
16 defendants could be guilty of conspiracy unless Codell Griffin
17 is so guilty. So, if you find him not guilty, that ends your
18 labors so far as concerns the conspiracy count.

19 If, however, you find Codell Griffin guilty, you
20 should then consider the guilt or innocence of each of the
21 other defendants, taking each separately, of the crime of
22 conspiracy.

23 A conspiracy, obviously, does not have to be in
24 writing and does not have to have any particular formality
25 attached to it. Nor does a person have to go through any
formality to join a conspiracy. A conspiracy is, as I have

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2 said, simply a common undertaking.

3 Indeed, each conspirator doesn't necessarily
4 have to know who the others are or what they are doing or
5 have done. What is necessary, however, is that a conspirator
6 know that the common undertaking exists, be aware of its un-
7 lawful purpose, and intend to further that unlawful purpose.

8 So, the question before you at this stage of
9 your deliberations would be to determine which, if any, of
10 the other defendants joined Codell in his unlawful conspiracy.
11 What must be established before any defendant can be found
12 to have joined in such conspiracy is the following:

13 1. That he or she knew the existence of Codell
14 Griffin's illegal enterprise.

15 2. That he or she was aware of its unlawful
16 purpose, that is to say, the illegal distribution of heroin
17 in the manner that has been described to you; and,

18 3. That he or she wilfully and knowingly under-
19 took to further that particular unlawful purpose.

20 Now, one cannot stumble into a conspiracy by
21 mistake. A person cannot be guilty of conspiracy merely be-
22 cause he associates with others who happen to be so guilty.
23 A person can be so guilty only if he knows a common under-
24 taking is underfoot, and if he knows that such common under-
25 taking has a particular unlawful purpose, and if he wilfully

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2 and knowingly decides to join the common undertaking with
3 the intent of furthering that particular unlawful purpose.

4 In this connection let me give you the legal
5 definition of the words knowingly and wilfully.

6 An act is done knowingly if it is done volun-
7 tarily and purposefully, not because of mistake, accident
8 or negligence, or any other innocent reason. An act is done
9 wilfully if it is done knowingly, deliberately, and with
10 an evil motive or purpose.

11 Now, of course, evil motive or purpose is some-
12 thing that you don't see on a tape. A man doesn't go around
13 and put a sign on, "Now I have an evil motive or purpose."
14 There is no known way to find out what is inside a man's
15 mind.

16 So there are your two things, knowing, and what
17 the word means, and deliberately, not by accident or mistake
18 but deliberately. Evil in this case means a violation of
19 the statute, and evil in this case means the intent to violate
20 the statute dealing with heroin.

21 Of course, evil motive or purpose is something
22 you don't see on a tape.

23 You decide whether or not he had an evil motive
24 or purpose by looking at everything that you believe that
25 has been said about his activities and decide whether all

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those activities, all the evidence that you believe about
his activity, satisfies you beyond a reasonable doubt that
his motive or purpose in acting as he did was evil within
the terms as I have defined them. It does not mean conduct
of which you don't approve.

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2 Let's apply these general principles to some
3 of the facts before us. The mere fact that one or
4 another of the defendants may have sold heroin, even at
5 the behest of Codell Griffin, does not necessarily establish
6 that he or she was a member of the conspiracy. Assuming,
7 for the sake of this argument, this proposition, that you
8 are satisfied with respect to any defendant that such a
9 sale or sales were made, you must be satisfied by all
10 the circumstances before you that the defendant whose
11 guilt you are considering intended to assist and further
12 the illegal conspiracy.

13 Before you can come to that conclusion you would
14 have to be satisfied that such defendant was aware of
15 the conspiracy and its overall objectives.

16 Of course if you are satisfied that a defendant
17 did wilfully and knowingly participate in the conspiracy,
18 the extent of such participation is immaterial. It
19 may be momentary, or of long duration. It does not make
20 any difference as far as one's guilt of the crime of
21 conspiracy is concerned whether one was a member on the
22 day that the conspiracy was hatched and stayed throughout
23 it or joined it in the last day before its dissolution
24 or whether he or she joined it at some point and then
25 dropped out. Knowing participation at some point is all

1 pgrf 2

2 that counts.

3 Likewise, motive is immaterial. It may be for
4 financial gain, to preserve a source of supply for himself
5 or someone else or to assist some other member of the
6 conspiracy. In other words, there can be a variety of
7 motives, but one of them must include a wilful, knowing,
8 and uncoerced intention to further the conspiracy.

9 Let me revert briefly to the question of overt
10 acts. You will remember that I told you it is a peculiarity
11 of the law of conspiracy that some conspirator, not necessarily
12 the defendant whose case you are considering, has to do
13 something in furtherance of the conspiracy. The indictment,
14 a copy of which I will send into you, has 20 alleged overt
15 acts. All you need to find in order to satisfy this
16 requirement is that at least one of those alleged overt
17 acts was performed in the manner described and that the
18 person performing the -- not necessarily one of the
19 defendants before you -- was a member of the conspiracy
20 at the time he performed it and performed the act in
21 furtherance thereof.

22 The act does not necessarily have to be criminal
23 in and of itself. It just has to be an act set forth in
24 the indictment as "overt", one of these (indicating), and
25 has to have been done, performed, by a conspirator in

1 parf 3

2 furtherance of the conspiracy.

3 I am not going to read you these 20 acts.
4 Take them into the jury room and look at them yourself.
5 I will read you the first one as an illustration.

6 In or about April 1974, the Defendant Codell
7 Griffin a/k/a "Cody" purchased a half kilogram of heroin
8 for \$16,500 in New York, New York. And then it goes on
9 down.

10 If you find one of those things performed by the
11 person mentioned and that the performance was in the
12 course of the conspiracy, that satisfies the overt act.
13 You must find it beyond a reasonable doubt.

14 To summarize then with respect to the conspiracy,
15 the first count in the indictment, you will first decide
16 whether or not Codell Griffin is guilty under the law
17 as I have defined it to you.

18 If you answer that question in the affirmative,
19 you will then decide which if any of the other defendants
20 are also guilty. I have several times mentioned that each
21 defendant's guilt or innocence must be separately considered,
22 however, because of the peculiarities of this case you
23 cannot convict any defendant of conspiracy unless you have
24 already convicted Codell.

25 However, if you do so convict him, you may --

separately considering each of the other defendants, convict all of them, none of them, or one or more of them.

You will remember that I told you at the outset of this part of my charge that a finding of guilty against Codell does not necessarily mean that he had conspired with any of these defendants. His conspiracy -- if you find one -- may have been with other persons named or unnamed in the indictment.

Skipping the second count of the indictment to which I will return to later, I will refer to Counts 3 to 12, each of which charges one or more of the defendants with an individual crime of the unlawful possession of heroin.

I will say at the outset that these crimes are independent of the crime of conspiracy. In other words, you may acquit one or all of the defendants of the conspiracy count and nevertheless convict the same defendant or defendants of one or more of the individual counts.

By the same token you can convict all or any of the defendants of the conspiracy and acquit them or any of them of the individual counts.

Each of these counts charges possession of heroin with an intent to distribute. Now, what does "possession"

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mean? It means just what it says. I possess this pencil which I am holding in my hand. That is what is called actual possession. But I also possess half a dozen or so similar pencils which are up on my desk on the 30th floor of this building.

I also possess certain clothing which is hanging in my closet at home. These latter examples are called constructive possession. In other words, I possess anything I have in my hand or over which I can exercise control. Of course, the control would have to be personal in the sense I have described it.

If I authorize someone else to receive something on my behalf, I come into constructive possession of that something as soon as the person so authorized receives it.

What then does "distribut" mean? It means to put something into someone else's possession or cause that to happen. Distribute means to hand over to someone else, get it in someone else's possession. It does not necessarily mean a big apparatus of distribution. It just means getting it from one person to another.

The law with which we are here dealing does not make mere possession of heroin a crime. To establish the crime charged in Counts 3 to 12, one must possess heroin with the intent to distribute. Intent may be

1 parf 6

2 inferred from everything we know about the situation.
3 Assume that given a defendant has heroin in his possession.
4 Is he intending to hang on to it or to do something,
5 to give it to somebody else? If he is intending to give it
6 to somebody else, that is the intent to distribute. One need
7 not necessarily make the distribution. One just has to
8 have the intent to distribute.

9 There is another rule applicable to these
10 counts, namely, that one may be guilty of these crimes
11 either directly or as an aider or abettor. One can be guilty
12 of possession as an aider and abettor without having actual
13 possession oneself, or even constructive, by wilfully
14 and knowingly inducing someone else to take possession
15 or by wilfully and knowingly assisting him in so doing.

16 Applying these rules, it is up to you to decide
17 whether the Government has established beyond a reasonable
18 doubt the individual crimes alleged in the indictment.
19 I might as well call them briefly to your attention.

20 Count 3 says that in or about April of 1974 in
21 the Southern District of New York -- everything that has
22 happened here as far as I know is in the Southern District;
23 I take it there is no contest on that -- the defendant,
24 Codell Griffin, unlawfully, intentionally and knowingly
25 possessed with intent to distribute approximately a half

1 parf 7

2 kilogram of heroin. That is Count 3.

3 Count 4 makes the same allegations with respect
4 to Codell Griffin in or about May of 1974 and says it is
5 a half kilogram of heroin.

6 Count 5 makes substantially the same allegation
7 with respect to Codell Griffin in or about June of 1974
8 and again it says half a kilogram of heroin.

9 Count 6, substantially the same allegation against
10 Codell Griffin in or about April of 1975, this time
11 approximately 200 quarter spoons of heroin.

12 Count 7 makes an allegation against Donna Forte:
13 In or about September of 1975 in the Southern District of
14 New York Donna Forte unlawfully, wilfully and knowingly did
15 distribute and possess with intent to distribute approximately
16 50 quarter spoons of heroin.

17 Count 8, on or about the 16th of December 1975 --
18 let me pause a moment. It says "on or about the 16th of
19 December." It does not have to have proof to be exactly
20 that date. "On or about" means what it says, on or about.

21 This refers to Codell Griffin, 1/8 kilogram
22 of heroin.

23 Count 9, on or about the 13th of February, 1976,
24 Codell Griffin and Willie Griffin -- this one is the first
25 one that I remember that involves Willie Griffin --

1 pgrf 8

2 Codell Griffin and Willie Griffin and others, approximately
3 100 quarter spoons of heroin.

4 Count 10, on or about the 29th of June, '76 --
5 again, on or about -- Codell Griffin, Thomas Bovkin, alias
6 Monk, approximately 29 quarter spoons of heroin.

7 Count 11, Cody Griffin and Kenneth Ivery, on or
8 about the 14th of July '76, 40 quarter spoons of heroin.

9 Count 12, Kenneth Ivery alone, on or about the
10 14th of July, 1976, approximately 79 quarter spoons of
11 heroin.

12 With respect to each of these counts the question
13 before you is: Did the defendant or defendants named in
14 each count possess heroin on or about the time mentioned
15 w-th intent to distribute, and was such possion wilful and
16 knowing?

17 In that connection you will remember the definition
18 of wilful and knowing I gave you in connection with the
19 conspiracy count. Everything applies to that, what I said
20 about wilful and knowing and what I said about how you
21 prove it. You remember, I told you that you could acquit
22 any defendant on conspiracy and convict him or her of the
23 substantive counts or vice versa.

24 You probably say, "How can you do that?"

25 For example, you could acquit Cody Griffin of the

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1 conspiracy on the ground that it was not a continuing
2 conspiracy as outlined to you. You can consider whether or
3 not he was guilty of any of these substantive crimes and
4 convict him of that if you find that he was, or you
5 could convict him of conspiracy and find for whatever
6 reason that satisfied you that he was not, his guilt was
7 not established on any one or all of the substantive counts.
8

9 The same reason, by the same token, you might acquit
10 any of the other defendants of the conspiracy count on the
11 ground that it had not been shown that the defendant
12 whose your guilt you are considering was aware of the
13 overall nature of the conspiracy and had all these other
14 frames of mind he had to have. You can find him or her
15 guilty of a conspiracy or him or her not guilty.
16 You can find that the Government has not satisfied you.

17 I just emphasize each count, each defendant,
18 that a separate determination has to be made.

19 Let me turn to Count 2 of the indictment, which
20 is against Codell Griffin alone. That count charges
21 a crime under the Controlled Substances Act of May 1, 1971.
22 I don't have to give the date of the Act but that date
23 is pertinent here.

24 That Act makes it unlawful for one to engage in
25 a continuing criminal enterprise consisting of a series

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1 of violations of the federal narcotics laws. In this
2 case we are dealing only with the sale of heroin. It
3 makes it unlawful for one to engage in a continuing criminal
4 enterprise consisting of a series of violations of the
5 federal narcotics law in concert with five or more
6 other persons with respect to whom one occupies a supervisory
7 or managerial position and from which enterprise one
8 obtains a substantial income. In considering Count 2 you
9 may consider only evidence from May 1, 1971, only evidence
10 relative to events happening on or after May 1, 1971,
11 the date as I just told you, when this particular statute was
12 enacted.
13

14 Before you can find Codell Griffin guilty of the
15 crime charged in the second count of the indictment you
16 must be convinced beyond a reasonable doubt that the
17 Government has proved the following elements.

18 First, that the Defendant Codell Griffin committed
19 at least the conspiracy offense charged in Count 1, or at
20 least three of the substantive offenses which are charged
21 in Counts 3 through 6 and 8 through 11 of this indictment.

22 In other words, if you have not convicted Codell
23 of conspiracy, or of three of the other counts, you need not
24 consider this one.

25 Second, that the offenses charged in Count 1, 3

1 through 6 and 8 through 11, whichever you may find him guilty
2 on, that those offenses, the ones you have found him guilty
3 on, are part of a continuing series of violations by
4 the Defendant Codell Griffin of the federal narcotics laws.
5

6 Third, that the Defendant Codell Griffin undertook
7 to commit such offenses in concert with five or more other
8 persons. This need not be five at any one period of time,
9 and the five can include persons not on trial before you.

10 Fourth, that the Defendant Codell Griffin
11 occupied a position of organizer, supervisor, or other
12 position of management with respect to these five or more
13 other persons.

14 The fifth and last essential element is: Proof
15 beyond a reasonable doubt that from the continuing
16 series of violations, if you find them to exist, the
17 Defendant Codell Griffin obtained substantial income or
18 resources.

19 Let me discuss with you the fourth essential
20 element which requires proof beyond a reasonable doubt
21 that Codell Griffin was an organizer or a manager or a
22 person in a supervisory position. Let me say that in this
23 connection "organizer" can be defined as a person who puts
24 together a number of people engaged in separate activities
25 and arranges them in their activities in one essentially

2 orderly operation or enterprise. The supervisory position,
3 as from a phrase as used under the statute, can be
4 defined as one who manages or directs or oversees
5 the activities of others.

6 Let me take up with you some of the definitions
7 which may be important under the fifth requirement or
8 element that Codell Griffin be shown to have substantial
9 income or resources from illicit trafficking in heroin.

10 As to that issue simply observe in the context
11 of this count and the underlying statutes, "substantial" means
12 something having considerable or ample size or value.

13 In the last analysis it is for you to determine
14 whether any income the Government may have shown to have
15 been derived from undertaking trafficking in heroin is or
16 is not substantial.

17 In that connection you will consider first,
18 was the income that has been mentioned here, was that
19 derived by Codell Griffin in trafficking in heroin? That
20 has to be established to your satisfaction beyond a
21 reasonable doubt.

22 Secondly, what is the amount that has been
23 established to your satisfaction by a reasonable figure?
24 That is a figure you can work out for yourself and agree
25 upon it.

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Third, does that constitute "substantial" in your sound judgment.

Ladies and gentlemen, I think that concludes my preliminary charge to you and I hope pretty much my final charge to you. I will now excuse you and you will please not discuss the case before you come back. You have other things to talk about.

(Jury left courtroom.)

(Pause.)

THE COURT: Do you have any exceptions?

MR. SCHMUKLER: I do have some exceptions.

I would except to that portion of your charge in which you conveyed the impression to the jury that the defendant could be guilty of a one-man conspiracy. You didn't indicate any point in your charge that the defendant could not be guilty of conspiracy. The Defendant Codell, unless you find he conspired with other persons -- although you defined conspiracy as requiring an agreement between two or three individuals -- you failed to remind them at each separate juncture when you pointed out they had to deliberate with respect to the Defendants Griffins' guilt or innocence on that charge.

THE COURT: I don't think that criticism is valid.

MR. GARNETT: I recall you saying --

1 ards 7

2 MR. GARNETT: I don't believe your Honor men-
3 tioned with respect to the separate counts there must be
4 a unanimous verdict.

5 THE COURT: Anyone else have any other comments?
6 Do you have any comments as to the verdict form?

7 (No response)

8 THE COURT: Put one at each place.

9 (Jury verdict form distributed)

10 MR. RIVERS: May I be heard a moment?

11 This sheet has adopted the allegations of the
12 indictment, namely, that the individual Thomas Boykin is Monk.

13 THE COURT: No, I will mention that. That doesn't
14 mean that it is so, merely that it is stated in the indict-
15 ment.

16 MR. RIVERS: That is no evidence.

17 THE COURT: That is right. It doesn't mean
18 that I think he is Monk.

19 (Jury present)

20 THE COURT: There is nothing of major moment,
21 just odds and ends and questions of emphasis and clarity.

22 First, one thing I forgot to mention with re-
23 spect to the substantive counts, you have to be satisfied
24 beyond a reasonable doubt that the particular defendant you
25 are considering had in his or her possession what was indeed

1 ards 8

2 heroin and that you are to consider all the evidence you
3 heard in the case that relates to that particular subject.
4 I forgot to mention that.

5 Now, there has been some confusion, a possibility
6 of confusion in some of the things I said.

7 In one place I told you you could convict one
8 defendant, namely Codell Griffin and acquit all the others
9 of conspiracy or convict any one of them or all of them but
10 now, obviously, that does mean before you can convict Codell
11 Griffin you have to find that he conspired with someone.
12 You don't necessarily have to find he conspired with any one
13 of these five co-defendants, but you have to find that he con-
14 spired with at least one other person.

15 Now, I also mentioned several times that as
16 to any defendant whose guilt you are considering, he must be
17 aware of the existence of the conspiracy and the unlawful
18 objective but I didn't intend to give any impression, and I
19 don't think I did, but some people thought I might have, it
20 is obvious that the mere fact that you are aware of a con-
21 spiracy and know its objectives doesn't make you a conspirator.

22 I might know there is a conspiracy going on in
23 this very room and not do anything about it and that doesn't
24 make me a conspirator. To be guilty I have to be a person
25 who has to act, participate with the intent of furthering the

1 ards 9

2 objective. Just being aware, associating with people, isn't
3 enough.

4 Now, also, in my telling you that you could
5 convict and acquit, that is correct, actually, but it may
6 lead to some confusion.

7 With respect to the defendants Ivery, Boykin
8 and Burnside, the government theory as to those defendants
9 is that they did certain specific things which I won't
10 refer to --

11 MS.HINES: Burnside did nothing specific other
12 than the conspiracy count.

13 THE COURT: Burnside is not involved in the
14 substantive counts?

15 MS. HINES: No, he is not.

16 THE COURT: Thank you.

17 Talking about Ivery and Boykin. The government
18 theory is Ivery and Boykin, that they did certain specific
19 things and they want you to infer from all the evidence that in
20 doing those things they were trying to further the conspiracy.
21 I am not going back over the definition.

22 Well, obviously, if you find they didn't do those things
23 or there is a reasonable doubt on that point, you have to
24 find there is a reasonable doubt in your mind as to whether
25 Burnside or Monk, Boykin, and assign that reasonable doubt as

2 to Kenny as doing the things the government claims, on the
3 basis which the government asks you to find they were members
4 of the conspiracy, if you have a reasonable doubt you can't
5 find them guilty of the substantive acts.

6 Also, I gave you a definition of accomplice
7 and informer. Both definitions are correct but I think I
8 was probably confusing everybody and really there is no
9 difference as far as you are concerned as to accomplice or
10 informer.

11 It is just a habit lawyers have of going back
12 to the rule book and coming up with a rule book definition
13 of accomplice and another one for informer. It is the same
14 thing as far as you are concerned.

15 For the various reasons I have outlined, you
16 should scurtinize the testimony of such a person with extreme
17 care. But if you once accept it as truth, the testimony as
18 given as fact, you may act on it. Now, there is no difference
19 between the two so don't try to find any distinction between
20 the two as far as you are concerned.

21 Now, every essential fact that you must find,
22 you must find beyond a reasonable doubt. It is an essential
23 part of the crime and you must find that beyond a reasonable
24 doubt.

25 In the course of my discussion I may not have

1 ards 11

2 used that term every time. For example, when I said knowingly
3 and wilfully, some of the defendants think that I may have
4 misspoke and said knowingly or wilfully. Maybe I did. I
5 meant knowingly and wilfully and like everything else, knowing-
6 ly and wilfully every time, they both have to be established
7 beyond a reasonable doubt.

8 With respect to Count 2, which I told you
9 applies only to the defendant Codell Griffin, with respect
10 to the five subordinates, for want of a better term, obvious-
11 ly you can't be a subordinate within the meaning of that if
12 you are acting as a government informant.

13 So, the government never suggests that Leander
14 Clarke or Country would be one of the five persons -- Leander
15 or William Clark would be one of the five necessary sub-
16 ordinates nor could Kid, whatever his name is, Kid be such
17 a person after February 11, 1976 when he became an informer.

18 Obviously, you can't be under his supervision
19 if you are under government supervision. That is obvious.

20 Now, would you mark this as the next court
21 exhibit?

xxx

22 (Court Exhibit 6 marked, copy of indictment)

23 THE COURT: Court Exhibit 6 is a copy of the
24 indictment. There are certain things, and this is a retyped
25 copy after certain things have been left out and they are

1 ards 12
2 no longer relevant.

3 It is a copy of the indictment I am going to
4 give to the foreman and you may take it into the jury room.
5 I just want to point out one thing about that.

6 In the conspiracy count it is alleged about the
7 first day of September 1971 up to the date of the indictment,
8 the conspiracy alleged.

9 Now, the law on that is kind of odd but here
10 it is. These dates are not controlling, neither on one side
11 or the other.

12 If the conspiracy started earlier than the
13 date alleged in the indictment you consider that and if it
14 ended before the indictment, it does not make any difference.
15 What you have to find is one continuing conspiracy as I have
16 described it to you, at some period of time within the evi-
17 dence presented to you.

18 That applies, of course, only to Count 1. In
19 the other counts, the substantive counts, the dates are just
20 as I told you, on or about and it mentions what it says.
21 Count 2, as far as I told you, that is on the date the statute
22 was enacted.

23 In general, if during the deliberations you
24 want any exhibits, just send for them. That does not include
25 the transcripts of the tapes.

2 You remember why it doesn't, because the
3 transcripts of the tapes are not evidence, they are only
4 for your guidance. If you want to know what the tape says,
5 you ask us and we will set it up and play it to you.

6 We will have a transcript for your guidance at
7 that time. The transcripts are not in evidence and you can't
8 have them and I told you why that is so.

9 Also, you are entitled to have any testimony
10 read back that you want. If you do ask for testimony to be
11 read back, don't expect an instant replay. Occasionally it
12 happens the question that you asked would not be in counsel's
13 mind when he asked his questions and they will first have to
14 confer among themselves and see if they can agree on what
15 testimony is relevant to the question you asked and if they
16 can't agree, I will have to decide and we will have to find
17 it and then read it to you and all that takes time.

18 So if you ask for testimony go on to something
19 else if you possibly can and we will get it and it takes a
20 while.

21 Another thing, if at any time you want to hear
22 any further explanation of the law, don't hesitate to ask
23 me for it, just have the foreman write a note.

24 I already demonstrated once I am a lawyer and
25 I have a lawyer's hangups and I am in the habit of talking

1 to lawyers and that has been my whole professional life and
2 I try to avoid that when I am charging a jury but it has
3 happened, when we were talking about accomplice and informer
4 testimony, I went back to my legal training which was just
5 confusing and maybe there are other things I said to you
6 which are clear enough to these gentlemen but aren't clear
7 to you because that is language we are used to listening to.
8 So don't have any hesitancy to ask me to explain.

9
10 If you send out a note at any time you want,
11 but never tell me how you stand on any -- at any given time.

12 Once you think of it it is obvious why you
13 shouldn't. It may be that you will be deadlocked on some
14 issue of some kind, and I am not suggesting, but maybe.

15 If that happens I might feel in my judgment
16 that I should reason with you as a method of breaking the
17 deadlock.

18 Now, if I know how you stand -- supposing I
19 know you stand 10 to 2 for one position or another. There
20 is no method on earth or in hell that I could try to reason
21 with you without some way conveying to the two that I think
22 they ought to be with the ten and make it unanimous. Whereas,
23 if I don't know, I don't know where the two stand and the
24 ten stand, I can just reason because I don't know which side
25 the ten is on and which side the two is on.

1 ards 15 2469
2 Now, a fact which is obvious to me and maybe
3 obvious to you, your verdict has to be unanimous. In a criminal
4 case in this court there is no such thing as a non-unanimous
5 verdict either for or against. Either guilty or not guilty,
6 it has to be unanimous.

7 Now, I have marked as Court Exhibit 5 which
8 I have also given a copy to the foreman, a list of the verdicts
9 you must come to, unanimous verdicts or you should, if you
10 can, not must because if you can't you can't, come to in the
11 trial.

12 You must come to a unanimous verdict, guilty
13 or not guilty on each of these and let me emphasize each of
14 these in a sense is a separate trial. Each is a verdict
15 separately arrived at.

16 One thing again becomes obvious, it says here
17 Tom Boykin, Jr., Monk or some other are the same. That is
18 just a copy of the indictment. That doesn't mean that I think
19 Boykin is Monk or have any views on that subject. That is
20 an issue before you.

21 You have heard the evidence and the fact that
22 it is written on the copy from some statement in the indictment
23 and transcribed from the indictment, and the reason it is
24 transcribed from the indictment is because Country said it
25 and being in the indictment and being here is no evidence one

ards 16

way or the other. It has nothing to do with the testimony
before you.

I will see counsel at the side bar.

(Continued on next page)

end
tk5
am

(At the side bar.)

MR. SCHUMKLER: No comments

MR. WELLS: Nothing further.

MR. RIVERS: You misspoke but I don't want to mention it. You said something about Burnside being Monk. But --

THE COURT: Obviously it is inadvertent.

MS. HINES: Nothing further.

MR. STONE: Nothing further.

MR. GARNETT: Nothing further.

(In open court.)

THE COURT: Take this Exhibit No. 5. That's the original. Use the others I have given you. Don't write on this until you decide what you are going to do. Could be you could agree on some and not on others, but each point is a separate thing.

Swear the marshal.

(The marshal is sworn at 12:55 p.m.)

THE COURT: The alternates are to remain behind.

Ladies and gentlemen, I commit this case to you with full confidence that you will do justice between the United States of America and these defendants. You may retire.

(Jury retires to deliberate.)

A-108

JUDGMENT AND COMMITMENT ORDER

United States of America vs.

A-109

United States District Court for the SOUTHERN DISTRICT of NEW YORK

DEFENDANT

WILLIE J. GRIFFIN, a/k/a "Bill"

DOCKET NO. 76 Cr. 938 (WK)

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (6/74)

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH	DAY	YEAR
3	9	77

COUNSEL

WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL

O.T. Wells, Esq.

(Name of counsel)

GUILTY, and the court being satisfied that
there is a factual basis for the plea,

NOLO CONTENDERE,

NOT GUILTY

There being a finding/verdict of

NOT GUILTY. Defendant is discharged

GUILTY.

FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of **distributing and possessing with intent to distribute a Schedule I narcotic drug controlled substance and conspiracy (T. 21, U.S.C., §§812, 841(a)(1) and 841(b)(1)(B); T. 18, U.S.C., §2) as charged in counts 1 and 9.**

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of **seven and one-half (7-1/2) years on each of counts 1 and 9 to run concurrently with each other; and pursuant to T. 21, U.S.C., §841 defendant is placed on special parole for a period of three (3) years to commence upon the expiration of the term of imprisonment.**

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

U.S. District Judge

U.S. Magistrate

WHITMAN KIRPP

Date

3-9-77

CERTIFIED AS A TRUE COPY ON

THIS DATE 3-9-77

By *K. H. Lee*

() CLERK

(x) DEPUTY

Defendant committed 10-7-76

A-110

Following arrest:

Released 10-7-76 on bail.

**GENERAL
CONDITIONS
OF
PROBATION**

Where probation has been ordered the defendant shall, during the period of probation, conduct himself as a law-abiding, industrious citizen and observe all conditions of probation prescribed by the court. **TO THE DEFENDANT** — You shall:

- (1) refrain from violation of any law (federal, state, and local) and get in touch immediately with your probation officer if arrested or questioned by a law-enforcement officer;
- (2) associate only with law-abiding persons and maintain reasonable hours;
- (3) work regularly at a lawful occupation and support your legal dependents, if any, to the best of your ability. (When out of work notify your probation officer at once, and consult him prior to job changes);
- (4) not leave the judicial district without permission of the probation officer;
- (5) notify your probation officer immediately of any change in your place of residence;
- (6) follow the probation officer's instructions and report as directed.

The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within the maximum probation period of 5 years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

RETURN

I have executed the within Judgment and Commitment as follows: **MCC**

Defendant delivered on 3-9-77

MCC
KARSEN, FEDERAL DETENTION HQS., NEW YORK, N. Y. FOR SERVICE OF SENTENCE AT THAT INSTITUTION, OR FOR TRANSPORTATION TO ANOTHER INSTITUTION DESIGNATED BY THE ATTORNEY GENERAL, BY FRANK A. JULIANO

Defendant noted appeal on _____

FRANK A. JULIANO
U.S. MARSHAL SONY
SOUTHERN DISTRICT OF NEW YORK

Defendant released on _____

Mandate issued on _____

Defendant's appeal determined on _____

Defendant delivered on 4-8-77 to U.S.P.

at Term House Jail, the institution designated by the Attorney General, with a certified copy of the within Judgment and Commitment.

Charles D. Lucas
United States Marshal.

By Conrad W. Tugh

Deputy Marshal.

WELLS

AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK
COUNTY OF RICHMOND ss.:

EDWARD BAILEY being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 16 day of May, 1977 at No. 1 St. Andrews Pl., NYC

deponent served the within *appendix*
upon U.S. Atty. So. Dist. of NY

the Appellee herein, by delivering true copy(ies) thereof to him personally. Deponent knew the person so served to be the person mentioned and described in said papers as the Appellee therein.

Sworn to before me this
16 day of May 1977.

William Bailey
WILLIAM BAILEY

Notary Public, State of New York
No. 43-0132945

Qualified in Richmond County
Commission Expires March 30, 1978

Edward Bailey
Edward Bailey